

EXHIBIT N

Hearing

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHILLIPS, L.G., LCD CO., LTD,)
)
Plaintiffs,) C.A. No. 04-343(JJF)
)
v.)
)
TATUNG CO., TATUNG COMPANY OF)
AMERICA, INC., and VIEWSONIC)
CORPORATION,)
)
Defendants.)

Hearing of above matter taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, in the law offices of BLANK ROME, LLP, 1201 North Market Street, Wilmington, Delaware, on Monday, August 27, 2007, beginning at approximately 11:30 a.m., there being present:

BEFORE: THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

THE BAYARD FIRM
RICHARD D. KIRK, ESQ.
222 Delaware Avenue, Suite 900
Wilmington, Delaware 19899
for Plaintiffs

CORBETT & WILCOX
Registered Professional Reporters
230 North Market Street Wilmington, DE 19899
(302) 571-0510
www.corbettreporting.com
Corbett & Wilcox is not affiliated
with Wilcox & Fetzer, Court Reporters

Hearing

2 (Pages 2 to 5)

Page 2	Page 4
<p>1 APPEARANCES (Continued):</p> <p>2 MCKENNA, LONG & ALDRIDGE, LLP</p> <p>3 CASS W. CHRISTENSON, ESQ.</p> <p>4 REL S. AMBROZY, ESQ.</p> <p>5 LORA BRZEZYNSKI, ESQ.</p> <p>6 1900 K Street, N.W.</p> <p>7 Washington, D.C. 20006</p> <p>8 for Plaintiff</p> <p>9 RICHARDS LAYTON & FINGER</p> <p>10 FREDERICK L. COTTRELL, III</p> <p>11 ANNE SHEA GAZA, ESQ.</p> <p>12 One Rodney Square</p> <p>13 Wilmington, Delaware 19801</p> <p>14 for Defendant Tatung Co.</p> <p>15 GREENBERG TRAURIG LLP</p> <p>16 FRANK MERIDETH, ESQ.</p> <p>17 VALERIE HO, ESQ.</p> <p>18 MARK KREISMAN, ESQ.</p> <p>19 2450 Colorado Avenue, Suite 400E</p> <p>20 Santa Monica, California 90404</p> <p>21 for Defendant Tatung Company of America, Inc.</p> <p>22 CONNOLLY BOVE LODGE & HUIZ LLP</p> <p>23 JAMES D. HEISMAN, ESQ.</p> <p>24 1007 North Orange Street</p> <p>Wilmington, Delaware 19809</p> <p>for Defendant ViewSonic Corporation</p> <p>BINGHAM McCUTCHEN LLP</p> <p>SCOTT R. MILLER, ESQ.</p> <p>355 South Grand Avenue</p> <p>Los Angeles, California 90071-3106</p> <p>for Defendant ViewSonic Corporation</p> <p>RASKIN PETER RUBIN & SIMON LLP</p> <p>TRACY ROMAN, ESQ.</p> <p>1801 Century Park East, 33rd Floor</p> <p>Los Angeles, California 90071</p> <p>for Defendant ViewSonic Corporation</p>	<p>1 August 24th, 2007, attaching correspondence from</p> <p>2 McKenna, Long dated August the 23rd of 2007,</p> <p>3 correspondence from Mr. Christenson dated August 23rd of</p> <p>4 2007, and I just received correspondences from Ms. Gaza</p> <p>5 dated today, August 27th, 2007.</p> <p>6 I realize that there may be reference back</p> <p>7 to other documents, and my question is: Which would you</p> <p>8 prefer to address first?</p> <p>9 Has there been any further discussion on any</p> <p>10 of the three topics or four topics? Not the topics in</p> <p>11 terms of the deposition topics but of the matters in</p> <p>12 issue? It appeared to me, from what I was reading, that</p> <p>13 there was ongoing conversation with respect to at least</p> <p>14 the deposition topics that --</p> <p>15 MR. MILLER: Your Honor, we did have a</p> <p>16 discussion with regard to the deposition topics. As you</p> <p>17 may recall, we had agreed to provide to LPL our thoughts</p> <p>18 as to which of the topics we felt were within the scope</p> <p>19 of the discussions that have been had. We provided that</p> <p>20 to LPL in the form of a red-line as well as a clean</p> <p>21 version of that red-lined where we had taken the prior</p> <p>22 topics and deleted certain of them and tried to limit</p> <p>23 certain of the others in a way that would ameliorate any</p> <p>24 concerns and also encompass what we understood to be</p>
Page 3	Page 5
<p>1 SPECIAL MASTER POPPITI: Mr. Kirk, please.</p> <p>2 MR. KIRK: Thank you, Your Honor. This is</p> <p>3 Richard Kirk from The Bayard Firm for the plaintiff, LG</p> <p>4 Phillips LCD Co., Ltd. With me on the line from</p> <p>5 Washington are my colleagues from McKenna, Long &</p> <p>6 Aldridge, Cass Christenson, Rel Ambrozy, and Lora</p> <p>7 Brzezynski.</p> <p>8 MS. GAZA: Good afternoon, Your Honor. Anne</p> <p>9 Gaza from Richards, Layton & Finger. On the phone with</p> <p>10 me is Valerie Ho from Greenberg Traurig for the Tatung</p> <p>11 defendants.</p> <p>12 SPECIAL MASTER POPPITI: Thank you.</p> <p>13 MS. HO: And Frank Merideth as well.</p> <p>14 SPECIAL MASTER POPPITI: Thank you.</p> <p>15 MR. HEISMAN: Good afternoon, Your Honor.</p> <p>16 Jim Heisman from Connolly Bove on behalf of ViewSonic</p> <p>17 Corporation. With me on the line are Scott Miller and</p> <p>18 Tracy Roman in California.</p> <p>19 SPECIAL MASTER POPPITI: Thank you.</p> <p>20 I just want to make sure that everyone has</p> <p>21 in front of them what we would be discussing today, and</p> <p>22 that would be correspondence from Fred Cottrell dated</p> <p>23 August 26th, 2007. I also have correspondence,</p> <p>24 actually, e-mail from Mr. Kirk that's dated Friday,</p>	<p>1 your directive that the parties should try to make sure</p> <p>2 that plaintiff, to make sure that the plaintiff knew the</p> <p>3 areas they wanted to have a witness prepared on so we</p> <p>4 didn't find ourselves in a situation where a witness had</p> <p>5 come 10,000 miles and in the deposition chair and hadn't</p> <p>6 realized they needed to be prepared on certain issues.</p> <p>7 So, we placed those into that document. I</p> <p>8 believe that document, at least the red-lined form, was</p> <p>9 sent to you. The copy I had of the correspondence</p> <p>10 didn't look like you got the clean version of that. I</p> <p>11 could send that to you.</p> <p>12 SPECIAL MASTER POPPITI: What I was working</p> <p>13 with was the attachment to the August 23rd</p> <p>14 correspondence to Mr. Miller.</p> <p>15 MR. KIRK: Yes, Your Honor. It was from</p> <p>16 Mr. Christenson to Mr. Miller, and it also attached, I</p> <p>17 think, the red-lined version --</p> <p>18 SPECIAL MASTER POPPITI: That's correct.</p> <p>19 MR. KIRK: -- to show the most recent</p> <p>20 changes.</p> <p>21 SPECIAL MASTER POPPITI: That's correct.</p> <p>22 That's what I was working from.</p> <p>23 MR. MILLER: And we had a conversation,</p> <p>24 then, August 22nd, with LPL, about the topics. I</p>

Hearing

3 (Pages 6 to 9)

Page 6	Page 8
<p>1 believe that, in that conversation, the parties had</p> <p>2 generally acknowledged that the issues that were the</p> <p>3 subject matter of the deposition notice were generally</p> <p>4 within the scopes of the items that had been identified</p> <p>5 We were anticipating that, on August 23rd,</p> <p>6 we would get back additional markup of comments on those</p> <p>7 topics from LPL. Instead, we got Mr. Christenson's</p> <p>8 letter, which just really recited much of their side of</p> <p>9 the discussion that took place on the 22nd. So there</p> <p>10 have been no further discussions since August 23rd with</p> <p>11 regard to those topics.</p> <p>12 SPECIAL MASTER POPPITI: Okay. Then I think</p> <p>13 what's important to do is to, and it's unfortunate that</p> <p>14 we are in this position, but I think we are, and let me</p> <p>15 make one comment before we launch into the discussion of</p> <p>16 this.</p> <p>17 As I think I have said before, what we had</p> <p>18 been involved with over now the past couple of weeks and</p> <p>19 I believe now the third session with me, is an effort to</p> <p>20 pave the path forward on a deposition that I have</p> <p>21 suggested and agreed to permit.</p> <p>22 Now, having said that, it seems to me that</p> <p>23 the time to take any exception to what I have suggested</p> <p>24 and permitted is when this is all done. I don't think</p>	<p>1 for the moment for purposes of an example, and I realize</p> <p>2 that in Mr. McKenna's correspondence to Mr. Miller,</p> <p>3 topic five is the discussion of a number of different</p> <p>4 points in that piece of correspondence.</p> <p>5 As I read what topic five covers, even</p> <p>6 though it refers to the phrase "commercial success," I</p> <p>7 had understood that what you all were trying to</p> <p>8 accomplish with the topics and what I expected you were</p> <p>9 trying to do was to give as much detail as would permit</p> <p>10 the witness to prepare, that's your obligation, and then</p> <p>11 the witness' obligation flows from that, and, yet, at</p> <p>12 the same time, I think we were all striving to expect</p> <p>13 that the topics would not be in the traditional, Here's</p> <p>14 the topic, here are the 15 subtopics. So that when I</p> <p>15 look down at the phrase "commercial success," and we can</p> <p>16 have a discussion about whether or not that calls for</p> <p>17 some legal conclusion or not, I expect that that's a</p> <p>18 shorthand way of describing the focus of topic five.</p> <p>19 MR. MILLER: Your Honor, that's exactly</p> <p>20 correct.</p> <p>21 SPECIAL MASTER POPPITI: And you have done</p> <p>22 it elsewhere in the topics. So, for purposes, again, of</p> <p>23 looking at topic five as an example, assuming that, with</p> <p>24 respect to topic five, there are no other issues that</p>
Page 7	Page 9
<p>1 it makes sense otherwise because I have been involved,</p> <p>2 if you will, in your meet and confers. I think that's</p> <p>3 the only fair way to do it, unless you all arrive at a</p> <p>4 different resolution to that one issue, namely, when do</p> <p>5 you have to file the exceptions</p> <p>6 If you agree that the exceptions with</p> <p>7 respect to the deposition itself should run from when I</p> <p>8 first indicated that that should occur, then I will, it</p> <p>9 makes sense to -- you should live by your agreement. If</p> <p>10 you can't agree, I think it would be unfair to start the</p> <p>11 time running from the moment that that iteration was</p> <p>12 made</p> <p>13 I don't know that we need to dwell on that</p> <p>14 at this juncture, but if we should, let's do that</p> <p>15 MR. CHRISTENSON: Your Honor, I think it</p> <p>16 makes sense for us to talk off-line about that and see</p> <p>17 if we still have any dispute given your comments</p> <p>18 SPECIAL MASTER POPPITI: Okay. Then let's</p> <p>19 look, or begin to look at the issues with respect to the</p> <p>20 topics. And let me see if I understand what you have</p> <p>21 done here in the conversation, the one conversation that</p> <p>22 you did have with respect to the topics, themselves</p> <p>23 And let me do it by way of example.</p> <p>24 For example, if you look at topic No. 5 just</p>	<p>1 need to be resolved, or even, once those issues are</p> <p>2 resolved, my question is: Understanding, as I did, that</p> <p>3 commercial success was a shorthand way of describing</p> <p>4 what you could do in five, six, seven, eight, nine, ten</p> <p>5 subtopics, what's the issue with respect to No. 5?</p> <p>6 MR. CHRISTENSON: Cass Christenson for LPL,</p> <p>7 Your Honor. The issue, and this is something that we</p> <p>8 discussed with the defendants, the issue is that what we</p> <p>9 understand we are looking at in the prior topics, one</p> <p>10 through four, are the type of facts that we would think</p> <p>11 would fall under the umbrella of, quote, unquote,</p> <p>12 commercial success. And, therefore, our concern is</p> <p>13 that, apparently, there is some additional fact or</p> <p>14 subtopic that's intended to be encompassed in this</p> <p>15 catchall provision, but we really don't know what it is,</p> <p>16 and the defendants were not able to give us any specific</p> <p>17 examples that would fall under the topic five that's not</p> <p>18 covered under the prior topic.</p> <p>19 SPECIAL MASTER POPPITI: That's why I picked</p> <p>20 five as an example to start with.</p> <p>21 MR. CHRISTENSON: So if there is something</p> <p>22 there, it seems like it's helpful for us to know in</p> <p>23 advance what is it that they are going to argue later,</p> <p>24 potentially, they think is relevant to commercial</p>

Hearing

4 (Pages 10 to 13)

Page 10	Page 12
<p>1 success that's not set forth more specifically in prior 2 topics.</p> <p>3 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>4 MR. MILLER: Your Honor, we did have this 5 discussion, as we told Mr. Christenson on the 22nd, we 6 had gone through and tried to provide information or 7 topics that would pick out some of the specific areas 8 that would be relevant to commercial success, but we 9 also didn't want to be in a situation where we were in 10 an argument with them about whether or not something 11 that clearly is directed to whether or not these newly 12 produced products and the new information bears on the 13 issue of commercial success but is outside the words 14 that were chosen previously. And rather than go through 15 and try to propound a request that they are, a series of 16 requests that would have, as you said, 15 subparts, we 17 tried to just have, you know, specific ones, and then 18 this sort of catchall.</p> <p>19 As we said to Mr. Christenson in our call, 20 we are trying to make sure we are not having fights. We 21 don't have -- we are not -- we don't have a secret 22 agenda here of somehow trying to do this, but we also 23 don't want to be in a point of, because of the manner in 24 which we have tried to prepare this list of information,</p>	<p>1 to anticipate what would potentially come under this 2 catchall topic, or the burden would fall on the 3 defendants in advance to state, with more particularity, 4 what it is.</p> <p>5 SPECIAL MASTER POPPITI: I understand all 6 that. And the reason why I mentioned "legal conclusion" 7 was because that's one of the issues that you raised 8 with respect to topic five, and I don't think there 9 should be any misapprehension about legal conclusions.</p> <p>10 Mr. Miller, do you expect that you are going 11 to want this witness to be -- you are going to be asking 12 legal conclusions with respect to commercial success and 13 somebody should be in a position to answer them?</p> <p>14 MR. MILLER: No, I don't. And, in fact, we 15 advised Mr. Christenson on our call on the 22nd that if 16 they wanted to -- and the kinds of the things that we 17 thought we might get back from them on the 23rd would be 18 a request to put in things like factual underpinning 19 relating to commercial success. That's obviously what 20 we are looking for. I am happy to go through the 21 expense that there are, you know, a broad handle here 22 like commercial success and put in the words "facts 23 underlying" or something like that because that's 24 clearly what we are looking for.</p>
Page 11	Page 13
<p>1 be in a situation where we can't ask a question that, in 2 the normal course of events, we all would sit down and 3 agree is a commercial success, proper commercial success 4 question but may not fall, as I say, within the specific 5 words that we used in front of the prior requests.</p> <p>6 So that was the whole purpose of this, is to 7 try to avoid arguments, taking, as I said earlier, 8 seriously your admonitions, that we want to make sure we 9 have enough details for the lawyers to be able to sit 10 down and prepare their clients and for the clients to -- 11 and for the defendants to be able to be circumscribed in 12 their questions about the new discovery.</p> <p>13 SPECIAL MASTER POPPITI: Mr. Christenson, 14 with that understanding, and knowing that you can expect 15 that I will be on the other end of the telephone call 16 when you are doing this work, why isn't it an 17 appropriate way to approach topic five even though the 18 earlier topics are more specifically directed at facts 19 that may underlie the issue of commercial success?</p> <p>20 MR. CHRISTENSON: One concern we have, and 21 you hit on it earlier, is that this is really a topic 22 that's framed in terms of a legal conclusion and what we 23 think is the appropriate way to frame the topic 24 Ultimately, the burden would either fall on LPL to try</p>	<p>1 We are not looking for legal conclusions or 2 expert testimony.</p> <p>3 SPECIAL MASTER POPPITI: I would expect that 4 with respect to both, you said with respect to 5 commercial success and expert testimony, and it may be 6 that those words would appropriately find their way into 7 these topics for purposes of just answering that 8 question.</p> <p>9 MR. MILLER: I am happy to insert that when 10 we are done here and we have final guidance about what 11 we should do.</p> <p>12 SPECIAL MASTER POPPITI: Mr. Christenson, 13 any other discussion on five?</p> <p>14 MR. CHRISTENSON: No, Your Honor. I think 15 it comes down to -- I think the issue is framed and I 16 think it just comes down to whether you believe it's 17 appropriate to allow sort of catchall topic frames in 18 this legal fashion rather than -- you know, in addition 19 to the more specific topics that are set forth.</p> <p>20 SPECIAL MASTER POPPITI: If we were having a 21 different conversation and if the conversation was 22 backdropped against a properly noticed deposition and 23 that deposition was framed against topics and subtopics, 24 there is no question we would be having a different</p>

Hearing

5 (Pages 14 to 17)

Page 14	Page 16
<p>1 conversation.</p> <p>2 Given what I expected I was asked to do, and</p> <p>3 you both agreed that I should be participating in this</p> <p>4 fashion, I believe that the topic five does comply with</p> <p>5 both the letter and spirit of what I expect that we were</p> <p>6 doing</p> <p>7 I certainly do not anticipate that five, or</p> <p>8 any others that we focus on, given my guidance, if you</p> <p>9 will, on five, I certainly do not anticipate that there</p> <p>10 is going to be an effort to sandbag a witness or to</p> <p>11 waste time. And that's why I will make myself available</p> <p>12 while you are doing that work.</p> <p>13 With those changes to five, understanding</p> <p>14 that it's not contemplated to deal with a legal analysis</p> <p>15 or an expert opinion and with the proposed language</p> <p>16 change that I suggested, I will let five stand.</p> <p>17 That may impact on others here. I expect it</p> <p>18 would. And you all know your topics and your</p> <p>19 discussions with respect to those topics better than I,</p> <p>20 but I am happy to walk through the topics with you and</p> <p>21 make sure that what I have just done with five gets</p> <p>22 mirrored to other topics and whatever subparts exist.</p> <p>23 Who is going to take lead, please?</p> <p>24 MR. CHRISTENSON: Yes, Your Honor. This is</p>	<p>1 under your definitions of those terms. And we</p> <p>2 previously agreed with the other side that the Rule</p> <p>3 30(b)6 depositions in this case would not encompass</p> <p>4 parties' positions or contentions on validity</p> <p>5 infringement or enforceability, but, rather, those</p> <p>6 issues would be for the expert witnesses</p> <p>7 So we don't want to be in a position where</p> <p>8 the witness is going to be asked questions that would</p> <p>9 fall into that expert realm and require the witness to</p> <p>10 take positions related to claim construction.</p> <p>11 SPECIAL MASTER POPPITI: Mr. Miller</p> <p>12 MR. MILLER: Your Honor, what I advised</p> <p>13 Mr. Christenson of on the 22nd was that we would be --</p> <p>14 consistent with our agreement, if LPL's witness says, We</p> <p>15 are relying solely on expert testimony with regard to</p> <p>16 those issues, that that's fine, that was our agreement.</p> <p>17 But if they intend to put on a witness, a fact witness,</p> <p>18 beyond their expert to testify about any of these</p> <p>19 things, obviously, we are entitled to know what that</p> <p>20 fact witness is going to say and all we would be looking</p> <p>21 for here is if there are facts that their fact witnesses</p> <p>22 intend to deal with or testify to at trial, we want to</p> <p>23 know what they are. If they are going to come in and</p> <p>24 say, We are solely relying on expert testimony with</p>
Page 15	Page 17
<p>1 Cass Christenson. Why don't I go through, if I may, and</p> <p>2 I can just sort of, starting at the beginning, I can</p> <p>3 flag any concerns that we had and we can get your input</p> <p>4 if that's acceptable.</p> <p>5 SPECIAL MASTER POPPITI: Sure.</p> <p>6 MR. CHRISTENSON: Some of these I don't want</p> <p>7 to revisit because I think they are acceptable given</p> <p>8 your prior guidances and instructions. For example,</p> <p>9 topics 1B, C, D, topics 2B, C, and D, I think, are</p> <p>10 within the general scope of which you had found</p> <p>11 permissible</p> <p>12 SPECIAL MASTER POPPITI: Okay.</p> <p>13 MR. CHRISTENSON: I did want to raise an</p> <p>14 issue with respect to topic 1B</p> <p>15 SPECIAL MASTER POPPITI: Yes</p> <p>16 MR. CHRISTENSON: Topic 2B is the same for</p> <p>17 purposes of this concern.</p> <p>18 SPECIAL MASTER POPPITI: It's a mirror.</p> <p>19 MR. CHRISTENSON: And that is that it's</p> <p>20 framed in a way that is related to your claim</p> <p>21 construction. And, so, it's asking potential -- and we</p> <p>22 discussed this with the defendants as well -- it's</p> <p>23 potentially requiring the witness to talk about LPL</p> <p>24 products in terms of what claim limitations they meet</p>	<p>1 regard to those issues, that will be the end of the</p> <p>2 inquiry.</p> <p>3 SPECIAL MASTER POPPITI: Can I expect, then,</p> <p>4 your response is really framed in sub paragraph C, D,</p> <p>5 and E of each of those topics, No. 1 and No. 2? I think</p> <p>6 what happened, and, certainly, even before looking at</p> <p>7 LPL's position with respect to the topic in terms of</p> <p>8 arguing through it, when I looked at it, and I did turn</p> <p>9 to the topics first, I certainly had the concern that</p> <p>10 LPL raises.</p> <p>11 It seems to me, though, that,</p> <p>12 Mr. Christenson, what Mr. Miller just said was what</p> <p>13 makes -- it certainly makes sense to me. If topic B</p> <p>14 gets responded to by virtue of saying, We intend to rely</p> <p>15 on expert opinion, doesn't that answer the concern?</p> <p>16 MR. CHRISTENSON: It sounds like it would,</p> <p>17 Your Honor. I agree with you that the factual -- we</p> <p>18 understood were the factual type questions were under</p> <p>19 subparts C and D.</p> <p>20 SPECIAL MASTER POPPITI: C and D</p> <p>21 MR. CHRISTENSON: And D, obviously, does not</p> <p>22 read that way. So, if that's the -- if the</p> <p>23 understanding is that they will not attempt to make LPL</p> <p>24 an expert in that regard, then I understand that and</p>

Hearing

6 (Pages 18 to 21)

Page 18	Page 20
<p>1 that resolves that concern.</p> <p>2 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>3 Mr. Miller, did you hear?</p> <p>4 MR. MILLER: Yes. I was speaking on mute.</p> <p>5 SPECIAL MASTER POPPITI: That's all right.</p> <p>6 MR. MILLER: Yes. What I said was, Our</p> <p>7 agreement originally from the beginning has been so long</p> <p>8 as the parties indicates they are relying solely on</p> <p>9 expert testimony, that that's the end of the inquiry.</p> <p>10 SPECIAL MASTER POPPITI: Okay.</p> <p>11 MR. MILLER: So we are happy to abide by</p> <p>12 that.</p> <p>13 SPECIAL MASTER POPPITI: Okay. I expect</p> <p>14 that, with that understanding, the topics and the</p> <p>15 subtopics underneath of that are gone, do you agree,</p> <p>16 Mr. Christenson</p> <p>17 MR. CHRISTENSON: We understand that your</p> <p>18 expectation is, Your Honor, that those are permissible</p> <p>19 subject areas, yes.</p> <p>20 SPECIAL MASTER POPPITI: Thank you.</p> <p>21 MR. CHRISTENSON: Thank you.</p> <p>22 Topic 1E and 2E, I think, are within the</p> <p>23 scope of what you expected. I think there is a concern</p> <p>24 there that it's, you know, very broad in terms of the</p>	<p>1 put a finer point on that type of subject so that we</p> <p>2 would be talking about marketing and advertising with</p> <p>3 respect to the relevant product features or what they</p> <p>4 believe are the relevant product features of LPL's</p> <p>5 products.</p> <p>6 And we understood, as we say in our August</p> <p>7 23rd letter, that, based on the hearings, those features</p> <p>8 were going to be primarily the potential fastening</p> <p>9 elements on the products, and that was discussed in the</p> <p>10 transcript on August 16th.</p> <p>11 We see that, in topic 4B, there is that</p> <p>12 limitation, so that topic 4B now talks about sales</p> <p>13 distribution, marketing, and advertising with respect to</p> <p>14 fastening elements or mounting features --</p> <p>15 SPECIAL MASTER POPPITI: Did you say 4B?</p> <p>16 MR. CHRISTENSON: Yes, 4B. So, in our view,</p> <p>17 that really is the topic that was discussed on August 16</p> <p>18 and the topic that you deemed appropriate, that we think</p> <p>19 topics 3C, D, E, which opens up that field to make it</p> <p>20 overly broad and burdensome, is not within the four</p> <p>21 categories that were discussed on August 16 and is to</p> <p>22 far afield from the relevant subject matter which is</p> <p>23 really what's already set forth under topic 4B.</p> <p>24 So we object to topics 3C, 3D, and 3E, and</p>
Page 19	Page 21
<p>1 number of products and the way that the topic is framed,</p> <p>2 but, ideally, we will be able to resolve that by trying</p> <p>3 to pinpoint certain products. And if not, we will just</p> <p>4 have to deal with that topic generally, which is the way</p> <p>5 that it's currently framed.</p> <p>6 So, I don't think there is anything we need</p> <p>7 to do today on 1E.</p> <p>8 MR. MILLER: Your Honor, on that point, in</p> <p>9 our discussion on the 22nd, we indicated that,</p> <p>10 obviously, if they had documents that would assist the</p> <p>11 witness, we are happy to have those documents and try to</p> <p>12 narrow issues and use documents in a way that will be</p> <p>13 efficient. If there are other documents they have that</p> <p>14 they haven't produced, that would be great. If there</p> <p>15 aren't, then we will be able to only get the information</p> <p>16 that's available.</p> <p>17 SPECIAL MASTER POPPITI: Okay.</p> <p>18 MR. CHRISTENSON: With respect to topic</p> <p>19 three, and I am looking at the red-lined, which is</p> <p>20 topic, actually, 3C, 3D, and 3E, these topics deal very</p> <p>21 broadly with sales marketing, supply channels, product</p> <p>22 distribution, customer relationships for a whole host of</p> <p>23 products, and we understood, from the hearing that we</p> <p>24 had with you on August 16th, that ViewSonic was going to</p>	<p>1 the transcript citation where that limitation was</p> <p>2 discussed was the August 16 transcript at pages 68</p> <p>3 through 70.</p> <p>4 In terms of general product distributions</p> <p>5 and customer relations and the like, that was part of</p> <p>6 our two-day deposition that LPL provided previously and</p> <p>7 we feel that that discovery should not be closed.</p> <p>8 SPECIAL MASTER POPPITI: What was the date</p> <p>9 of the transcript?</p> <p>10 MR. CHRISTENSON: It was the August 16</p> <p>11 transcript starting at page, I believe, 68</p> <p>12 MR. KREISMAN: It's Mark Kreisman joining</p> <p>13 I apologize for my late joining, Your Honor.</p> <p>14 SPECIAL MASTER POPPITI: Just give me a</p> <p>15 moment to pull that transcript. Hold on one second.</p> <p>16 MR. CHRISTENSON: It looks like it starts on</p> <p>17 page 67, Your Honor.</p> <p>18 SPECIAL MASTER POPPITI: Okay. I pulled the</p> <p>19 different binder into the room. Mr. Miller.</p> <p>20 MR. MILLER: Well, I start with 3D, as in</p> <p>21 David. I am surprised that that's on his list today</p> <p>22 because that was in the recited list of topics</p> <p>23 Mr. Christenson indicated before were acceptable at the</p> <p>24 last hearing. I don't remember if it was on August 16th</p>

Hearing

7 (Pages 22 to 25)

Page 22	Page 24
<p>1 or 17th. I was trying to skim through the transcripts, 2 but I know that is one of the topics they had already 3 indicated. So we have not spent any time, obviously, 4 looking at that one, nor did we have any other 5 discussion with regard to it.</p> <p>6 With regard to topics 3C and 3E, I think 7 that 3C relates to the flat panel display products which 8 are assembled products which LPL has taken the position 9 consistently in discussions that they know nothing 10 about.</p> <p>11 SPECIAL MASTER POPPITI: Right</p> <p>12 MR. MILLER: In our call on August 22nd, 13 apparently, it sounds like LPL does, in fact, have 14 knowledge relating to fully assembled final products 15 other than just modules, themselves, and, thus, they 16 raised a concern about 3C.</p> <p>17 I don't -- given the representations that 18 have been made about their lack of knowledge, I don't 19 know how I can do anything that would limit this. We 20 are not, obviously, going to try to look at -- we are 21 going to focus on things that are really important here 22 and relevant to the issues in this case and the 23 discovery that has been produced or, in this case, 24 perhaps discovery that hasn't been produced. But I</p>	<p>1 on a number of different occasions, the answer has been, 2 We don't do that; we don't have any information with 3 respect to that.</p> <p>4 Mr. Christenson.</p> <p>5 MR. CHRISTENSON: Yes. What Mr. Miller 6 discussed with respect to the meet and confer was not 7 entirely, it was either not entirely accurate or not 8 entirely clear. But, to explain, we do not make 9 finished flat panel display products, but we do know, 10 obviously, who LPL's customers are because they buy 11 modules from us.</p> <p>12 SPECIAL MASTER POPPITI: Right.</p> <p>13 MR. CHRISTENSON: And some of those 14 customers make finished products. So, there is some 15 level of knowledge, Your Honor, that LPL, I think, would 16 have, and if -- and I understand your view to be that 17 topic 3C is appropriate to the extent that there is 18 knowledge.</p> <p>19 SPECIAL MASTER POPPITI: Let me ask this 20 question in light of what you just said: Mr. Miller, if 21 the expectation is there is going to be some discussion 22 about the marketing, shipment, importation chain, that's 23 not what you are looking for; correct?</p> <p>24 MR. MILLER: What I am looking for would be,</p>
Page 23	Page 25
<p>1 don't -- I don't know how I can limit this further. 2 My expectation, frankly, was that we were 3 hear -- the answer would be, We don't know anything 4 about this given all the prior representations, and now 5 I learn, in this meet and confer, there may be things 6 there.</p> <p>7 SPECIAL MASTER POPPITI: When I was looking 8 at 3C, my reaction was certainly, if the answer is, We 9 don't know, then that's the answer.</p> <p>10 MR. MILLER: Correct.</p> <p>11 SPECIAL MASTER POPPITI: And, 12 Mr. Christenson, I don't know whether we need to discuss 13 that. If that's going to be the answer, then that is 14 the answer, and any concerns about a scope and burden 15 and everything else just fly out the window.</p> <p>16 If, in fact, during the meet and confer, and 17 I don't believe that I had the benefit of that 18 information, at least I hope I didn't because I don't 19 remember it, that is the information that Mr. Miller 20 just shared, and, that is, that there may be some 21 knowledge. I think it's a fair line of inquiry if for 22 no other reason than the representation, rather, as I 23 recall it, each time we have addressed issues that 24 implicate topics or a topics in C, and we have done it</p>	<p>1 at least at one level, one thing I would be looking for 2 would be, if there are prior art products that we think 3 are relevant and need to be clarified as prior art that 4 were sold to somebody who imported those products into 5 the United States, we would want to know. And LPL new 6 -- for example, if LPL knew they sold a batch of product 7 X to Dell and Dell's importation of those products would 8 qualify that module as prior art, obviously, I would 9 need to know that LPL sold a batch of product X products 10 to Dell and that they were going into Dell product Y so 11 now I can track down the information on Dell product Y.</p> <p>12 And that's -- so, in that sense, we are 13 looking for information that would show how you would 14 qualify that module as prior art. And, historically, we 15 have always been told they don't have that information 16 They don't know what product X that LPL makes ends up 17 into product X, Y, or Z of company A, B, or C.</p> <p>18 SPECIAL MASTER POPPITI: In light of what I 19 believe I understand to be either the case with respect 20 to information conveyed during the meet and confer or at 21 least with respect to the issue that may have been 22 discussed during the meet and confer, I think topic 3C 23 is appropriate.</p> <p>24 Does that not implicate D and E on three?</p>

Hearing

8 (Pages 26 to 29)

Page 26	Page 28
<p>1 MR. CHRISTENSON: I think our concern</p> <p>2 remains with topic 3D and 3E that the scope and the</p> <p>3 breath, in just reading the topics, is excessively broad</p> <p>4 and there is really no focus It's not limited to prior</p> <p>5 art products It's not limited to -- it encompasses</p> <p>6 basically any and all aspects of any business</p> <p>7 relationship with any customer or any product that might</p> <p>8 be referenced anywhere in LPL's supplemental production,</p> <p>9 which is thousands of pages</p> <p>10 So, that's the difficulty we have with that</p> <p>11 scope, and that's, I think, why we had understood, in</p> <p>12 that August 16 hearing, that there was going to be a</p> <p>13 finer point</p> <p>14 SPECIAL MASTER POPPITI: Yeah. There is</p> <p>15 certainly -- I am in the August 16th hearing Let's</p> <p>16 just look at that for a moment, please</p> <p>17 Mr. Miller, I don't know whether you have</p> <p>18 that in front of you, sir.</p> <p>19 MR. MILLER: I do have the transcript, Your</p> <p>20 Honor.</p> <p>21 SPECIAL MASTER POPPITI: 67? You said 67,</p> <p>22 Mr. Christenson?</p> <p>23 MR. CHRISTENSON: Yes. That was where I was</p> <p>24 talking about our concerns about possibly having to</p>	<p>1 by virtue of the definition?</p> <p>2 MS. ROMAN: Yes, by virtue of definition and</p> <p>3 the number of products that will be ultimately inquired</p> <p>4 into.</p> <p>5 The second thing is that there is a certain</p> <p>6 amount of foundational facts, as Mr. Miller pointed out,</p> <p>7 that we need to inquire into in order to get to a</p> <p>8 determination whether a fastening element was or wasn't</p> <p>9 marketed. We certainly don't expect that we are going</p> <p>10 to find a great big advertisement that says, Look at</p> <p>11 this fastener on the rear of our module and it's a great</p> <p>12 way to mount your product, but there might be certain</p> <p>13 products that talk about damages that have been achieved</p> <p>14 in the product that we would want to try and relate back</p> <p>15 to the fastening elements, but we can't do that if we</p> <p>16 don't have the foundational facts that Mr. Miller</p> <p>17 described.</p> <p>18 SPECIAL MASTER POPPITI: Let me just look at</p> <p>19 -- Miss Roman, where in the red-line does it limit the</p> <p>20 number of products?</p> <p>21 MS. ROMAN: Let me just pull it. It would</p> <p>22 be in the definitions, Your Honor.</p> <p>23 SPECIAL MASTER POPPITI: I am looking in the</p> <p>24 definitions and I certainly recall that the definitions</p>
Page 27	Page 29
<p>1 testify about advertising was an example I was giving</p> <p>2 for an unspecified feature, or even a specified feature</p> <p>3 for an unspecified product, and I noted that could be</p> <p>4 hundreds of products over a 10-year time period. And</p> <p>5 then on page 68 to 69, there was further discussion I</p> <p>6 think you had pointed out that it would not make sense</p> <p>7 to anyone to have a lack of specificity because then we</p> <p>8 could have a problem with witness preparation and lack</p> <p>9 of discovery. And ViewSonic's counsel agreed and said</p> <p>10 that the case was about fastening elements and how the</p> <p>11 product is ultimately mounted.</p> <p>12 And then there was further discussion where</p> <p>13 ViewSonic's counsel, I think, had stated that there</p> <p>14 would be discussion between ViewSonic and Tatung to try</p> <p>15 to come up with some clarity on that.</p> <p>16 MS. ROMAN: Your Honor, I must have a</p> <p>17 different numbered set of the transcript, unfortunately,</p> <p>18 I am not in the exact same place. I just wanted to</p> <p>19 point out that certainly one limitation that has been</p> <p>20 added since that August 16th hearing is the narrowing of</p> <p>21 the scope of products to our previous -- or our recent</p> <p>22 meet and confers, so that's one thing that has been</p> <p>23 further provided to help narrow it.</p> <p>24 SPECIAL MASTER POPPITI: Narrowing the scope</p>	<p>1 were modified to reference --</p> <p>2 MR. MILLER: Your Honor, I think it is in</p> <p>3 the definition, for example, of prior art product.</p> <p>4 Originally, prior art products meant any product</p> <p>5 conceived, made, marketed, or sold by LPL before</p> <p>6 December 31, 1998. And now it is the products disclosed</p> <p>7 in the recent discovery that were conceived, made,</p> <p>8 marketed, distributed before December 31, 1998.</p> <p>9 So we have defined it by a specific subset</p> <p>10 as opposed to an unidentified subset, and I think that</p> <p>11 was a point Mr. Christenson was concerned about was any</p> <p>12 product conceived, prior to that time, all they have is</p> <p>13 this information. And I think that other LPL product in</p> <p>14 paragraph 20 of the definitions was similarly restricted</p> <p>15 to products disclosed in the recent discovery.</p> <p>16 SPECIAL MASTER POPPITI: Okay. And what</p> <p>17 was initially looking for, when I was listening to</p> <p>18 Ms. Roman, was a number limit, but there is no number</p> <p>19 limit. It's bounded a time limit and the description of</p> <p>20 supplemental discovery.</p> <p>21 MS. ROMAN: Your Honor, I would also point</p> <p>22 out that we have had, since this -- or in our last</p> <p>23 discussion, I believe, we pointed out that the letter</p> <p>24 from Mr. Kirk dated August 3rd indicated that there were</p>

Hearing

9 (Pages 30 to 33)

Page 30	Page 32
<p>1 approximately 23 prior art products that have been 2 disclosed in the recent discovery and approximately 50 3 later products that have been disclosed in the recent 4 discovery. And we had discussions about our offer to 5 further, if possible, narrow the number of products on 6 the other products to a smaller number if we could get 7 information from Mr. Christenson that provided family 8 information that allowed us to categorize products as, 9 you know, having similar features that were at issue 10 here.</p> <p>11 SPECIAL MASTER POPPITI: Yeah.</p> <p>12 MS. ROMAN: So that was sort of the number 13 of products I was referring to, but it falls just within 14 the scope of the recent discovery.</p> <p>15 SPECIAL MASTER POPPITI: Okay. Well, I 16 understand what the universe is, and I also understand 17 and expect that you would live by your representation 18 that if additional information is provided that permits 19 you to family them, if you will, that you will do that.</p> <p>20 And with that understanding, I am satisfied 21 that the scope is appropriately defined given the nature 22 of the production, and I don't find that it's going to 23 be overly burdensome.</p> <p>24 MR. CHRISTENSON: Your Honor, moving forward</p>	<p>1 the prior art and the prior profferings and the 2 differentiation the invention presumably injects into 3 the marketplace. We, obviously, didn't have the 4 opportunity to ask the witness about any other materials 5 that are in the documents that we have now just gotten 6 produced.</p> <p>7 SPECIAL MASTER POPPITI: Right. That's 8 correct.</p> <p>9 MR. MILLER: That's what we are looking for.</p> <p>10 SPECIAL MASTER POPPITI: And if, then, 11 Mr. Christenson, if the boss on the language that's 12 sitting on the page is, as I expect it was, and it 13 certainly has to be, focused on the supplemental 14 production, then I am satisfied that the Georgia Pacific 15 type questions can be asked with respect to that 16 supplemental production.</p> <p>17 MR. CHRISTENSON: Well, my -- just reading 18 the topic, then, Your Honor, I am not sure how to 19 reconcile the Georgia Pacific factors with the recent 20 production because the way this is -- the way this is 21 worded, it's asking about general subject areas or 22 factors under Georgia Pacific, and I really don't -- I 23 really don't see where a specific question could relate 24 to an LPL product that's reflected in the recent</p>
Page 31	Page 33
<p>1 to the next issue, and that is topic 4A.</p> <p>2 SPECIAL MASTER POPPITI: Okay</p> <p>3 MR. CHRISTENSON: Topic 4A refers 4 specifically to the Georgia Pacific analysis, which, of 5 course, is the analysis for reasonable royalty.</p> <p>6 SPECIAL MASTER POPPITI: Yes</p> <p>7 MR. CHRISTENSON: And this, again, was part 8 of -- we brought in a separate witness to address this 9 type of information at the prior deposition, a high 10 ranking executive from LPL, and who testified 11 extensively over the course of two days about LPL's 12 position with respect to reasonable royalty and the 13 various factors that would be relevant under Georgia 14 Pacific.</p> <p>15 And, so, here, we object to topic 4A because 16 it doesn't have anything to do with the specific 17 supplemental issues related to the documents that were 18 produced recently and a more general topic.</p> <p>19 SPECIAL MASTER POPPITI: I am sorry. I cut 20 you off, Mr. Christenson. I apologize.</p> <p>21 Mr. Miller, speak to that, please, if you 22 would.</p> <p>23 MR. MILLER: Sure. There are aspects of the 24 Georgia Pacific factors that look at issues concerning</p>	<p>1 production</p> <p>2 SPECIAL MASTER POPPITI: I am happy to pose 3 that question to Mr. Miller because it's certainly going 4 to be important for me to make sure that whatever 5 questions are framed are framed against supplemental 6 production.</p> <p>7 MR. MILLER: Your Honor, I think it will 8 because the supplemental production, for example, on the 9 prior art products, the issue about mounting features in 10 the prior art, shown in the prior art products or in the 11 supplemental production that are post prior art, 12 clearly, will have features that are going to be 13 compared to or that we are going to feel are appropriate 14 to compare to features on the accused products and to be 15 able to ascertain the impact that those have on the 16 underlying factors. For example, one underlying factor 17 is whether or not the invention is -- I don't have the 18 factors in front of me to state it specifically -- but 19 whether or not the -- there is an independent market 20 demand, for example, for the underlying feature that is 21 the subject matter of the invention.</p> <p>22 SPECIAL MASTER POPPITI: Right.</p> <p>23 MR. MILLER: And, obviously, we should be 24 entitled to inquire into LPL for facts relating to what</p>

Hearing

10 (Pages 34 to 37)

Page 34	Page 36
<p>1 market demand was there for these features that are 2 contained in the prior art products because we believe, 3 for example, that, to the extent there are fastening 4 elements on the back, if there was no market demand for 5 them then and they claimed they had a finished good 6 sometime later, there is a market demand, we are 7 entitled to try to impeach the later conclusion based on 8 the earlier facts and that's what we are going to be 9 driving at.</p>	<p>1 distribution, marketing, etcetera, with respect to what 2 ViewSonic deems to be the relevant features of LPL's 3 products. And, so, that comes right under 4B. But I 4 don't know what comes under 4A 5 MR. MILLER: Your Honor, again, I would 6 agree -- I mean, as we said earlier, part of this is to 7 make sure we are not in the situation where we are 8 arguing about whether or not we have identified. We can 9 have 14 subtopics, one for each of the 14 Georgia</p>
<p>10 So I think the topic is directed to and does 11 specifically say the materials and we can -- if 12 Mr. Christenson wants to propose some language to make 13 it clearer, we obviously invited that last week, but it 14 is associated with the LPL products which is defined as 15 the LPL other products or the LPL prior art products, or 16 any flat panel display product, which would be a 17 finished good of somebody using and employing the LPL 18 products.</p>	<p>10 Pacific factors, that would track like 4B if we wanted. 11 We didn't think that was the exercise we were trying to 12 engage in. And, so, we tried to put it into A. 13 We obviously had B there because it is an 14 issue that is more, that we are certainly going to focus 15 on. 16 SPECIAL MASTER POPPITI: Would you agree 17 with me that there are certain factors in Georgia 18 Pacific that you are not going to focus on?</p>
<p>19 So, if LPL, for example, took one of its 20 products and said, You can make a thin bezel monitor out 21 of this product because of these features, LPL is going 22 to want -- I suspect what we are going to see at trial 23 is that LPL is going to say, Well, ViewSonic said thin 24 bezel products, that's related to the practice of the</p>	<p>19 MR. MILLER: I would expect there would 20 definitely be some factors we are not going to focus on. 21 SPECIAL MASTER POPPITI: Then if there is a 22 remaining dispute, so that our discussion isn't 23 protracted, I think the best way to do it in terms of 24 the notice that we are talking about here and the</p>
Page 35	Page 37
<p>1 invention, and, therefore, pay us a lot of money 2 We should be entitled to see, without either 3 LPL directly or LPL's customers, as a result of the 4 information they received from LPL, made arguments about 5 similar promotion of products, it would impeach this 6 conclusion they are trying to reach that the practice of 7 the invention of the patents-in-suit is what led to 8 these thin bezel products as opposed to some other 9 feature</p>	<p>1 exercise that we have all participated in, I would ask 2 that with respect to the call out of the Georgia Pacific 3 factors that you are going to focus on in 4A is 4 appropriate. Okay? 5 MR. MILLER: Thank you, Your Honor 6 MR. CHRISTENSON: Your Honor, I don't think 7 we need to discuss 4B any further. 8 SPECIAL MASTER POPPITI: Okay. 9 MR. CHRISTENSON: 4D is a topic that we</p>
<p>10 SPECIAL MASTER POPPITI: I think with the 11 example that you just gave, you did what we did at the 12 beginning of this teleconference, and, that is, with 13 respect to commercial success, you did shorthand and 14 then you described what you were looking for. 15 With respect to any other relevant Georgia 16 Pacific factor, I think what I heard Mr. Christenson 17 say, I am not sure which ones you are focused on, and he 18 did just that, Mr. Christenson, did he not?</p>	<p>10 discussed with ViewSonic and it relates to forecasts or 11 projections since January 1, 1996. We are investigating 12 right now to see whether that information was requested 13 or whether that information exists at LPL, but, 14 obviously, just as ViewSonic, for its deposition, 15 convinced Your Honor that the deposition should not be 16 broader than the time period for the production; in 17 other words, there should be a mirror between the 18 document production time period on financials and the 19 deposition topics on financials, we would expect the 20 same would apply to LPL.</p>
<p>21 MR. CHRISTENSON: Your Honor, he did. I 22 understood everything he said. And everything that 23 Mr. Miller said comes directly under topic 4B. And, so, 24 I really don't have anymore clarification now than before. 4B talks specifically about any sales,</p>	<p>21 The document request requested documents 22 back to, and I am just taking this as an example, say 23 1998, it doesn't make sense for a witness to be expected 24 to testify on documents that did not need to be produced</p>

Hearing

11 (Pages 38 to 41)

Page 38	Page 40
<p>1 that go back to financials before 1998.</p> <p>2 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>3 MR. MILLER: Your Honor, I think -- two</p> <p>4 things. One, this came up at a hearing I know I wasn't</p> <p>5 at and I remember seeing something in the transcript</p> <p>6 where you indicated that an earlier date was appropriate</p> <p>7 in this case. We have documents that were never made</p> <p>8 available to us during the discovery period, and if we</p> <p>9 had needed to go back and revise the document requests,</p> <p>10 we obviously could have done it had they been produced</p> <p>11 timely.</p> <p>12 But the issue here really relate to things,</p> <p>13 for example -- let me look at it -- it deals with</p> <p>14 forecast projections in 1996 that would ultimately be</p> <p>15 sales in 1997, presumably, or some period of time later.</p> <p>16 And, so, we are looking at trying to get information and</p> <p>17 we think this bears on the commercial success if LPL</p> <p>18 believed it was going to sell 10 million of these</p> <p>19 things, product X, and it only sold 500 but it wants to</p> <p>20 contend that 500 is commercial success, I think that's a</p> <p>21 piece of information the jury has the right to know</p> <p>22 about.</p> <p>23 So, giving projections that would predate</p> <p>24 any actual sales data, I think, is completely</p>	<p>1 MR. CHRISTENSON: Just to be clear, I am not</p> <p>2 objecting to the time period in general because you did</p> <p>3 address the time period in general with respect to what</p> <p>4 are prior art products. What I am saying is, more</p> <p>5 specifically, when we get into financial information,</p> <p>6 the witness should only be testifying about what was</p> <p>7 requested for production, and, obviously, if they</p> <p>8 requested it and it exists, the witness can talk about</p> <p>9 it. If they didn't request it or it doesn't exist, then</p> <p>10 there is no reason -- the witness wouldn't have the</p> <p>11 information to be available to be discussing at the</p> <p>12 deposition.</p> <p>13 That was the same thing that we discussed</p> <p>14 with respect to ViewSonic's deposition and Your Honor</p> <p>15 agreed with ViewSonic on that point.</p> <p>16 SPECIAL MASTER POPPITI: Let me know -- I</p> <p>17 believe I have found that portion of the transcript that</p> <p>18 Ms. Roman was referring to, and it is, on my copy, at</p> <p>19 page 38 at the bottom, page 45 of what appears to be the</p> <p>20 transcript, it begins, Mr. Merideth says, "Yes. Well,</p> <p>21 the one product that they have disclosed is the Lucky</p> <p>22 Gold Star product that is attached to one of our letters</p> <p>23 to Your Honor in one of the supplemental submissions.</p> <p>24 "SPECIAL MASTER POPPITI: I am aware of it</p>
Page 39	Page 41
<p>1 appropriate, and I think Your Honor has already actually</p> <p>2 addressed this in a prior hearing.</p> <p>3 SPECIAL MASTER POPPITI: If I have addressed</p> <p>4 it, I really want to be aware of it in the context that</p> <p>5 I was addressing it.</p> <p>6 MS. ROMAN: It was during the August 16th</p> <p>7 hearing Mr. Miller just pointed out, and I am looking</p> <p>8 for the page, had pointed out that one of the products</p> <p>9 identified in the recent discovery were the products</p> <p>10 that dated back to 1996, and, unfortunately, on my</p> <p>11 numbered transcript, it's page 44. I am not sure if</p> <p>12 that's the same as everybody else's.</p> <p>13 SPECIAL MASTER POPPITI: 44 at the bottom of</p> <p>14 the page or 44 in the --</p> <p>15 MS. ROMAN: It's 44 at the top of the page.</p> <p>16 SPECIAL MASTER POPPITI: Do you want to read</p> <p>17 the language there for a moment, Ms. Roman</p> <p>18 MS. ROMAN: Mr. Miller was speaking and he</p> <p>19 says, "I would like to have an understanding, while we</p> <p>20 are here, and perhaps some guidance as to the relevant</p> <p>21 time period. We, obviously, believe that the discovery</p> <p>22 requests and the questions that we asked the witness,</p> <p>23 Mr. Kim, were appropriate going back at least until 1996</p> <p>24 when this Lucky Gold Star product was manufactured."</p>	<p>1 "MR. MERIDETH: Which is the 1996 Lucky Gold</p> <p>2 Star product."</p> <p>3 Mr. Merideth goes on, I think this is where</p> <p>4 you are, Miss Roman, "We asked Mr. Kim about the</p> <p>5 previous products that it used rear mounting fastening</p> <p>6 elements, and he claims that there were none. We</p> <p>7 certainly believe now that a 30(b)(6) witness ought to</p> <p>8 be available to testify who has knowledge of the</p> <p>9 fastening elements, particularly rear mounting elements,</p> <p>10 that existed on products prior to 1999, going back at</p> <p>11 least until 1996, and if there were rear mounted</p> <p>12 products before then, those products "</p> <p>13 Is that where you are?</p> <p>14 MS. ROMAN: Yes, Your Honor.</p> <p>15 SPECIAL MASTER POPPITI: My comment is,</p> <p>16 "Based on the production of the Lucky Gold Star</p> <p>17 document, I am satisfied that it should go back to 1996,</p> <p>18 and if there are other products before 1996, it should</p> <p>19 go back to identify them as well, to discuss that as</p> <p>20 well." I am just reading on so just give me one moment,</p> <p>21 please</p> <p>22 I expect, certainly, the context of what it</p> <p>23 looks like we were dealing with there was the production</p> <p>24 of the Lucky Gold Star documents, and what, if any,</p>

Hearing

12 (Pages 42 to 45)

Page 42	Page 44
<p>1 topics or questions could be posed to the 30(b)(6) 2 witness with respect to that product and any other 3 product that was identified even prior to 1996. 4 Would everyone agree with that? 5 MR. CHRISTENSON: LPL agrees. 6 MS. ROMAN: Yes, Your Honor. 7 SPECIAL MASTER POPPITI: With that ruling, 8 Mr. Christenson, how do you expect, then, that that 9 implicates your concern as it relates to topic 4D? 10 MR. CHRISTENSON: I think that the context 11 to that discussion, as you correctly noted, was with 12 respect to the time period of prior art products and the 13 ability of the defendant to ask questions back to that 14 early time period because it could be relevant, based on 15 their arguments, to their invalidity defense. But I 16 don't think that should give them license to force us 17 now to produce new documents, financial information, 18 when we have had numerous hearings and made numerous 19 efforts to provide all the financial information that 20 was requested timely during the discovery period which 21 went back to a certain time period. I don't think it 22 went back to 1996. And if they didn't ask for financial 23 information to be produced back that early when everyone 24 knew what was or was not relevant based on the issues in</p>	<p>1 information about the dates, but my answer to that would 2 be, In this circumstance, where we have a party who has 3 withheld documents that should have been produced eons 4 ago during discovery, and we could have, obviously, 5 propounded another request, if necessary, that we should 6 not be foreclosed from being able to obtain discovery on 7 what is unquestionably relevant information because the 8 party chose not to produce those documents until after 9 the close of discovery and now says you can't go back 10 and amend your discovery. 11 SPECIAL MASTER POPPITI: I did cover that, 12 certainly, by virtue of the questions that I asked 13 Mr. Christenson the last time we had a teleconference 14 and he was forthright in his response that it was a 15 decision, it wasn't something that resulted as -- it was 16 a result of something that couldn't be done. It was a 17 decision that was a certification decision, if you will 18 Let me question a little further. I mean, 19 it does seem to me, and I understand exactly what you 20 are saying, without having the framework of documents 21 that have been already requested and already identified, 22 therefore, and produced, it's kind of reaching into a 23 deep hole and reaching back. And I understand that your 24 argument is you should be able to do that, and I think</p>
Page 43	Page 45
<p>1 the case, then I don't think it's appropriate or fair 2 for them to now be able to, essentially, broaden or 3 serve new discovery requests for broader financial 4 information. 5 So, I am just talking about in terms of 6 financial information, which is what this topic 7 addresses, for financial information, we think that the 8 time period of the testimony should mirror the time 9 period of the document production, which is the same 10 conclusion that you reached with respect to -- when we 11 deposed the defendants' witnesses. 12 SPECIAL MASTER POPPITI: I remember. I 13 certainly did that. I, unfortunately, I gather none of 14 us remembers the time period. I don't. 15 Mr. Miller, is it the expectation that if, 16 for example, the time period were 1998, that given the 17 reach back that results from the identification of Lucky 18 Gold Star, is it your expectation that, in the context 19 of what we are doing here, namely, a 30(b)(6) witness, 20 that this witness needs to be preparing him or herself 21 by going back to all forecast projections or 22 expectations earlier than production in the case? 23 MR. MILLER: I guess, Your Honor, I would 24 say, and I was trying to see if I could find the</p>	<p>1 your argument is rather compelling in light of the late 2 production. 3 I am just looking to a concern with respect 4 to efficiency here where it's not a matter of saying to 5 a 30(b)(6) witness that's going to be sitting rather, in 6 short order, and we are going to be saying to that 7 individual, Go look for this stuff, at this stage of the 8 proceeding. 9 I am concerned about the logistics of it all 10 in terms of getting it all done to prepare that witness 11 to sit. Maybe I shouldn't be. That may be, and you may 12 say this to me, That's LPL's concern and problem 13 MR. MILLER: In my heart of hearts, that's 14 how I feel. This is a problem of their own making, and 15 I shouldn't be prejudiced in my ability to get the 16 information. As we said earlier, if there are documents 17 out there, we would be happy to take the production of 18 documents to make this efficient. It's not a memory 19 test, as we have all said on many occasions, talking 20 about these things, it's about getting the information 21 out that's appropriate so that the Court and jury can 22 make their own decision. And we are in this situation 23 not because of anything we did. 24 SPECIAL MASTER POPPITI: I understand the</p>

Hearing

13 (Pages 46 to 49)

Page 46	Page 48
<p>1 nature of the request. I understand what it may</p> <p>2 implicate. I understand how I have ruled in the past</p> <p>3 with respect to issues of this nature. It does reach</p> <p>4 back, but I believe it appropriately reaches back in</p> <p>5 light of the late production.</p> <p>6 If there can be a more efficient way to do</p> <p>7 topic 4B, then I would encourage everyone to do it. But</p> <p>8 I am going to leave it stand.</p> <p>9 MR. CHRISTENSON: We already addressed topic</p> <p>10 five.</p> <p>11 SPECIAL MASTER POPPITI: Yes.</p> <p>12 MR. CHRISTENSON: And topic six, we believe,</p> <p>13 falls within the scope of what you have previously</p> <p>14 concluded should be permitted in the supplemental</p> <p>15 deposition.</p> <p>16 SPECIAL MASTER POPPITI: Okay.</p> <p>17 MR. CHRISTENSON: So I think we already have</p> <p>18 that record and that decision from Your Honor.</p> <p>19 SPECIAL MASTER POPPITI: Okay.</p> <p>20 MR. CHRISTENSON: I don't think we have to</p> <p>21 revisit that.</p> <p>22 Topic seven, we did have some concerns about</p> <p>23 topic seven.</p> <p>24 First of all, topic 7I, which is framed as a</p>	<p>1 it fair to expect that the umbrella of topic No. 7 is</p> <p>2 whatever information is going to be elicited is</p> <p>3 information that is non-privileged?</p> <p>4 MR. MILLER: It would be non-privileged or</p> <p>5 information about which, if they raise the privilege,</p> <p>6 obviously, if they assert it, we are entitled to have</p> <p>7 the assertion, and we know we won't see it at trial, but</p> <p>8 that's the purpose is, if their questions would be</p> <p>9 within the scope of the privilege and they assert it,</p> <p>10 that's fine, we will deal with that provided it's a</p> <p>11 proper assertion.</p> <p>12 SPECIAL MASTER POPPITI: I understand</p> <p>13 Mr. Christenson.</p> <p>14 MR. CHRISTENSON: Yes. I think that</p> <p>15 clarification is helpful.</p> <p>16 Looking at the face of the topics, for</p> <p>17 example, in topic 7C and in topic 7H, there is specific</p> <p>18 reference to privileged communications within the face</p> <p>19 of the topic. So if they are now not planning to</p> <p>20 address those issues in the deposition, which is what I</p> <p>21 understand to be the case, it's essentially the effect</p> <p>22 of amending those topics not to any longer include those</p> <p>23 communications.</p> <p>24 MR. MILLER: Let's just be clear. We are</p>
Page 47	Page 49
<p>1 catchall inequitable conduct topic, I suspect, given</p> <p>2 Your Honor's prior comments, that would be treated the</p> <p>3 same as topic five and you would permit topic 7I even</p> <p>4 though LPL's position is that it's really overly -- it's</p> <p>5 not clear what's being requested and a more specific</p> <p>6 subject matter is set forth in the preceding topics.</p> <p>7 SPECIAL MASTER POPPITI: Mr. Miller, do you</p> <p>8 have anything else to add with respect to I before</p> <p>9 discussing some of the other concerns raised with</p> <p>10 respect to topic seven?</p> <p>11 MR. MILLER: Not as to the specifics of</p> <p>12 that. Obviously, I am happy to discuss the issues</p> <p>13 relating privilege or something that might be implicated</p> <p>14 which we also discussed with Mr. Christenson last week.</p> <p>15 SPECIAL MASTER POPPITI: Okay. Then, with</p> <p>16 respect to I, again, I think it's part of the way we</p> <p>17 have done -- that I have hopefully assisted in getting</p> <p>18 this business accomplished in terms of the way I is</p> <p>19 phrased, and I will raise the same concerns and caution</p> <p>20 with respect to questioning a witness using, if you</p> <p>21 will, 7I.</p> <p>22 So, having said that, it has to stand the</p> <p>23 way it is. And, you know, with respect to</p> <p>24 attorney/client privilege and things of that nature, is</p>	<p>1 going to ask the question and they are free to assert</p> <p>2 the privilege and that will the end inquiry if it's a</p> <p>3 proper assertion of the privilege. But we are not going</p> <p>4 to not have the -- force the assertion of the privilege</p> <p>5 at this time because, otherwise, they can raise it at</p> <p>6 trial and that's unfair to us.</p> <p>7 SPECIAL MASTER POPPITI: Right. And I</p> <p>8 understood your clarification.</p> <p>9 MR. CHRISTENSON: The other concern that we</p> <p>10 have, Your Honor, is that we don't want to be in a</p> <p>11 position where LPL testifies in response to some of</p> <p>12 these questions related to patent prosecution and then</p> <p>13 that testimony is used against us after the deposition</p> <p>14 to argue that there is a waiver and we should have to be</p> <p>15 further imposed on attorney/client communications.</p> <p>16 I am not sure how to really address that on</p> <p>17 the front end, but it's a concern that we did want to</p> <p>18 raise.</p> <p>19 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>20 MR. MILLER: We are not seeking to compel a</p> <p>21 waiver. If they have waived it or choose to waive it,</p> <p>22 we are entitled to discovery. If they haven't and they</p> <p>23 assert the privilege, we are not.</p> <p>24 SPECIAL MASTER POPPITI: I think that that's</p>

Hearing

14 (Pages 50 to 53)

Page 50	Page 52
<p>1 all that can really be done at this juncture, 2 Mr. Christenson. 3 MR. CHRISTENSON: I agree. 4 With respect to the topics, then, are we 5 correct in understanding that those topics will be 6 permitted, Your Honor? 7 SPECIAL MASTER POPPITI: Yes, sir. 8 MR. CHRISTENSON: Thank you. And then topic 9 eight, subtopic 8B, we talked with Mr. Miller about 10 this, and we understand, based on our discussion, that 11 they are going to ask questions concerning, for example, 12 whether something may be a true and correct copy or 13 whether, you know, something may be a business record, 14 which I think are appropriate questions. But the way 15 the topic reads is that the witness has to be prepared 16 to discuss whether documents produced meet the 17 requirements of admissible evidence under the Federal 18 Rules of Evidence. 19 SPECIAL MASTER POPPITI: I am happy to hear 20 that this is not law school evidence, whatever the 21 numbers are in the classroom. 22 MR. MILLER: It clearly is not and we made 23 that point last week. 24 SPECIAL MASTER POPPITI: Okay Good</p>	<p>1 rules of evidence, if appropriate 2 SPECIAL MASTER POPPITI: Thank you, sir. 3 MR. CHRISTENSON: And then the final 4 subtopic, Your Honor, is topic 8D, which are samples 5 that we understand that is within the scope of what you 6 had expected would be part of the supplemental 7 deposition, so I don't think we have any other issues 8 that we needed to discuss with you at this time 9 concerning the topics. 10 SPECIAL MASTER POPPITI: Okay. 11 MR. MILLER: On that last issue, I think, at 12 the meet and confer, Mr. Christenson indicated they were 13 — they believed they had some samples they were going 14 to make available to us this week. I don't know if he 15 has any further information on that he can share with 16 us. 17 MR. CHRISTENSON: Well, I was hoping to talk 18 to you about that on Friday, Scott, but I think you 19 didn't want to talk. I can talk to you again earlier 20 this week if you want. Did you get my letter on Friday? 21 MR. MILLER: I did get a letter from you on 22 Friday. 23 MR. CHRISTENSON: So we can talk later 24 MR. MILLER: Sure.</p>
Page 51	Page 53
<p>1 MR. CHRISTENSON: So if the issue is of 2 authenticity and business records, we can understand 3 that to be the topic notwithstanding the reading of 8B. 4 SPECIAL MASTER POPPITI: Mr. Miller, 5 anything else on that, then, please? 6 MR. MILLER: Obviously, there may be other 7 exceptions to the hearsay rule or some other issue that 8 would make it admissible and that's what we want to be 9 able to inquire about 10 SPECIAL MASTER POPPITI: About the facts, it 11 may implicate a rule of evidence? 12 MR. MILLER: Yes Correct. 13 SPECIAL MASTER POPPITI: Mr. Christenson 14 MR. CHRISTENSON: Those are the only two 15 examples, I think, that we had discussed. If there are 16 others, it would help to know in advance, but we are 17 doing the best we can. 18 SPECIAL MASTER POPPITI: I would urge that 19 if there are other examples that you know you are going 20 delving into, it would be important to know those in 21 advance just for purposes of the efficiency of the 22 deposition. 23 MR. MILLER: That's fine, Your Honor. I am 24 happy to point Mr. Christenson in the direction of other</p>	<p>1 SPECIAL MASTER POPPITI: Let's just talk a 2 little bit about logistics here. By virtue of going 3 through what we did today, you have got my direction, 4 and I think we can accomplish this one of two ways to 5 make sure this is on track for purposes of anyone 6 wanting to take exception to what I have done. 7 We can either -- I am just trying to think 8 of the most efficient way for purposes of generating 9 something that you may choose to put before Judge 10 Farnan. Pointing him to the transcripts that we have 11 generated over three some odd days, I am not sure is 12 going to be the most efficient way if something is 13 served up to him. And, yet, I want to make sure that 14 something gets generated as quickly as possible, and, 15 quite frankly, I am in the throws of doing a number of 16 orders and opinions in another case that will tie me up 17 at least through the end of the week 18 So, my question is this: I think the most 19 efficient way is for someone to prepare a form of order 20 for my review and signature, and, hopefully, get LPL to 21 agree to at least -- to the form, unless there is an 22 agreement as to both form and substance, and then, of 23 course, if there is, to form and substance, that says to 24 me there is going to be no exceptions taken, and the</p>

Hearing

15 (Pages 54 to 57)

Page 54	Page 56
<p>1 document you have drafted, I don't even need to see</p> <p>2 because it's a so ordered, if you will, on the record.</p> <p>3 Does that make any sense? And I realize I</p> <p>4 am throwing work back to one of you or one of your</p> <p>5 colleagues, and I know you are in the throws of an</p> <p>6 extraordinarily busy time, but I just want to get</p> <p>7 something finished, and I would propose that the finish</p> <p>8 should be by the end of the week so I can put my</p> <p>9 signature to something on Friday. It does not have to</p> <p>10 be lengthy. It can be in the nature of a, one of the</p> <p>11 shorter format orders that I have done.</p> <p>12 I know that, Ms. Gaza, you are on the line;</p> <p>13 correct? Is Anne on the line?</p> <p>14 MS. GAZA: Yes, Your Honor.</p> <p>15 SPECIAL MASTER POPPITI: I am sorry.</p> <p>16 I know that you have, or your colleagues</p> <p>17 have done it for me in the case that I am presently</p> <p>18 working on, that's the kind of order that I am thinking</p> <p>19 of, just to pull everything into one document for review</p> <p>20 by Judge Faman, if necessary.</p> <p>21 MS. GAZA: Okay.</p> <p>22 SPECIAL MASTER POPPITI: Rather than having</p> <p>23 him thrash around three days' worth of transcripts now.</p> <p>24 MS. GAZA: Understood, Your Honor. I can</p>	<p>1 -- I cannot answer that one way or the other at this</p> <p>2 point.</p> <p>3 SPECIAL MASTER POPPITI: Okay. Thank you</p> <p>4 I appreciate the process that I have proposed and I look</p> <p>5 for something not later than end of business on Friday.</p> <p>6 MR. CHRISTENSON: Yes, sir.</p> <p>7 MS. GAZA: We will make sure you get that,</p> <p>8 Your Honor.</p> <p>9 SPECIAL MASTER POPPITI: Thank you very</p> <p>10 much.</p> <p>11 We had -- I don't know whether we actually</p> <p>12 scheduled further discussion on Rudich and a different</p> <p>13 McKenna deposition for today. If anyone was under the</p> <p>14 impression that we have not done that, then I am happy</p> <p>15 to do it other than today. But if you are all prepared</p> <p>16 to do that, then I am as well.</p> <p>17 MS. HO: Your Honor, our understanding was</p> <p>18 that these issues would be addressed today.</p> <p>19 SPECIAL MASTER POPPITI: Okay.</p> <p>20 MS. BRZEZYNSKI: We have no objection to</p> <p>21 proceeding today as well.</p> <p>22 SPECIAL MASTER POPPITI: Okay. Just give me</p> <p>23 one moment. Just hold one second, please.</p> <p>24 I think the most recent documents, and I</p>
Page 55	Page 57
<p>1 work with counsel to put that together.</p> <p>2 SPECIAL MASTER POPPITI: And can it be done</p> <p>3 in the time frame that I get to see the final product by</p> <p>4 Friday, end of business, Eastern time?</p> <p>5 MS. GAZA: I believe so, if that's fine for</p> <p>6 Mr. Miller and Mr. Connor.</p> <p>7 MR. MILLER: We will make time.</p> <p>8 SPECIAL MASTER POPPITI: And what I would</p> <p>9 need, then, it needs to be generated on your end, turned</p> <p>10 around to LPL to have their view as to form only, and</p> <p>11 then back to me by Friday. So, I mean, I'd like you to</p> <p>12 work out that kind of detail, if you would.</p> <p>13 MS. GAZA: Certainly, Your Honor. We will</p> <p>14 do something like we did in the other case that we</p> <p>15 drafted and exchanged and then get the final to you by</p> <p>16 Friday.</p> <p>17 SPECIAL MASTER POPPITI: Okay.</p> <p>18 Mr. Christenson, do you have any -- I am going to ask,</p> <p>19 you can tell me that you don't know and I don't need to</p> <p>20 know, do you know whether your client has made a -- is</p> <p>21 there a determination as to whether or not there is</p> <p>22 going to be exception taken or you don't know yet or you</p> <p>23 are not at liberty to say?</p> <p>24 MR. CHRISTENSON: Your Honor, I don't know</p>	<p>1 referenced them earlier, earlier this afternoon, was</p> <p>2 correspondence to Mr. Kirk dated the 23rd of August and</p> <p>3 correspondence from Ms. Gaza dated August 27,</p> <p>4 Who is going to start, please?</p> <p>5 MR. MERIDETH: Your Honor, I think our view</p> <p>6 is that the discovery, with respect to Ms. Rudich,</p> <p>7 should be limited in light of her most recent</p> <p>8 declaration and the information that may have been given</p> <p>9 by Ms. Brzezynski to the subject of the '079 application</p> <p>10 and her representations with regard to the IBM prior art</p> <p>11 reference.</p> <p>12 Frankly, our view is that since she is</p> <p>13 unable to address the issues with regard to inequitable</p> <p>14 conduct that have arisen as a result of the revelation</p> <p>15 of the Lucky Gold Star product, that there be a 30(b)(6)</p> <p>16 witness from McKenna served up on the topics that we</p> <p>17 have provided which relate to inequitable conduct.</p> <p>18 SPECIAL MASTER POPPITI: Let's speak, first,</p> <p>19 to Miss Rudich's deposition. I have reviewed and am</p> <p>20 mindful of her declaration of August 20th, 2007, and,</p> <p>21 therefore, understand the context in which Mr. Merideth</p> <p>22 is suggesting that her deposition be limited to a</p> <p>23 discussion of the '079 application.</p> <p>24 And what I haven't done is I have not combed</p>

Hearing

16 (Pages 58 to 61)

Page 58	Page 60
<p>1 back through the transcripts of the several times that 2 we had discussed Miss Rudich, but I think it was fairly 3 clear in those earlier transcripts that I was going to 4 permit the deposition on the '079 and that the question 5 remained with respect to her broader knowledge involving 6 the patents in issue.</p> <p>7 Does everyone agree with that?</p> <p>8 MR. MERIDETH: Yes, Your Honor.</p> <p>9 MS. BRZEZYNSKI: Go ahead, Mr. Merideth.</p> <p>10 MR. MERIDETH: I agree.</p> <p>11 MS. BRZEZYNSKI: Certainly, we are under the 12 impression that Your Honor was still considering these 13 issues. LPL continues to take exception to the position 14 that Miss Rudich must provide any testimony at all; 15 however, we do agree that if any deposition is ordered 16 of Miss Rudich, it has to necessarily be limited to the 17 '079 application and the IBM prior art reference.</p> <p>18 SPECIAL MASTER POPPITI: Okay. Then I 19 believe that the prior -- my comments in prior 20 transcripts reflect my view as to whether or not she 21 should be required to offer deposition testimony only on 22 the '079 application, and I will require that.</p> <p>23 It seems to me, again, the most efficient 24 way to get some document in place so that I can turn --</p>	<p>1 think she would be the appropriate person.</p> <p>2 SPECIAL MASTER POPPITI: I don't think I 3 framed my question very artfully.</p> <p>4 I don't see anything clearly enough to 5 suggest to me that there was a focus on anyone as a 6 30(b)(6) deponent on the issue of inequitable conduct.</p> <p>7 MR. MERIDETH: I believe that's also 8 correct. I don't think it is up to the Tatung 9 defendants to designate the witness that would speak for 10 McKenna.</p> <p>11 SPECIAL MASTER POPPITI: I understand that. 12 But where is the discussion on a 30(b)(6) witness?</p> <p>13 MR. MERIDETH: The discussion was originally 14 with respect to Miss Rudich and her knowledge with 15 respect to the prosecution of these patents which arose 16 when the issues regarding her testimony came up, I 17 think, for the second time, at which we discussed the 18 scope of her deposition that covered both the issues of 19 the '079 patent and inequitable conduct in light of the 20 recent disclosure of the Lucky Gold Star reference.</p> <p>21 If she was not the person to be able to give 22 that testimony, as we had thought she was, then we 23 believe that we should be entitled to take a 30(b)(6) 24 deposition of McKenna on the subject of this recently</p>
Page 59	Page 61
<p>1 so that Judge Farnan can turn to it as quickly as he 2 can, if there is an exception taken, would be to 3 generate the document as I have proposed earlier.</p> <p>4 Mr. Merideth.</p> <p>5 MR. MERIDETH: I will be happy to do that.</p> <p>6 SPECIAL MASTER POPPITI: Miss Brzezynski, 7 all I am looking for is approval as to form only.</p> <p>8 MS. BRZEZYNSKI: I understand, Your Honor.</p> <p>9 SPECIAL MASTER POPPITI: Let's turn to the 10 other issue, and let me just ask a question: 11 Mr. Merideth, I have not gone back through the history 12 of Rebecca Rudich perhaps as carefully as I should for 13 purposes of having this conversation today, but I think 14 I know it fairly well, and what I am not sure that I see 15 is a clear path forward to Rebecca Rudich as the 16 30(b)(6) deponent for purposes of your discussion of 17 inequitable conduct.</p> <p>18 MR. MERIDETH: I would agree with that, Your 19 Honor. In fact, I am not proposing, based on her 20 declaration, or on the representations made by 21 Miss Brzezynski, that she be the 30(b)(6) witness. It 22 doesn't appear that she has had the exposure to the 23 patents-in-suit. I had an impression from her earlier 24 declaration that she did have, and, as a result, I don't</p>	<p>1 produced prior art.</p> <p>2 SPECIAL MASTER POPPITI: Okay. And I 3 understand your position with respect to wanting to look 4 rather squarely at this recent production of the prior 5 art.</p> <p>6 I guess my question is: In looking at the 7 subjects, or the topics, I am sorry -- let me get those 8 in front of me -- looking at topics No. 1, 2 -- No. 1 9 and 2 and all the subtopics under that, isn't it fair to 10 say that those subtopics could have been the subject of 11 a 30(b)(6) notice before fact discovery concluded?</p> <p>12 MR. MERIDETH: That's correct, except that 13 we did not have the information that we now have that 14 was just produced with respect to this Lucky Gold Star 15 product, and that creates an entirely new ball game, 16 from our vista, because we need to know what 17 considerations were taken with respect to not producing 18 other prior art references.</p> <p>19 In other words, prior to having that, we 20 didn't have a basis to assert, although there were 21 general allegations in the complaint with -- I mean, in 22 the answer, that cites inequitable conduct, we didn't 23 have a specific. Now we have a specific. We have a 24 product that is in all fours, that is an invalidating</p>

Hearing

17 (Pages 62 to 65)

Page 62	Page 64
<p>1 piece of prior art, it was not produced to the patent 2 office, it was not produced to us but was intentionally 3 withheld, according to Mr. Christenson, and that was a 4 strategy that was undertaken by McKenna, and we are now 5 in a situation --</p> <p>6 MR. CHRISTENSON: That's not fair. That's 7 not what I said. That's not correct.</p> <p>8 SPECIAL MASTER POPPITI: Just let him 9 finish, please.</p> <p>10 MR. MERIDETH: That's the way I interpret 11 it, is that there was a decision made not to produce 12 this prior art reference. We now have the prior art 13 reference and it raises very significant issues with 14 regard to inequitable conduct, and we think we ought to 15 be able to inquire into those issues.</p> <p>16 It's not our purpose to inquire into things 17 that could have been inquired into before, except the 18 difficulty that we have is, A, we have a real for 19 instance, it's very specific, and it's the Lucky Gold 20 Star product. There are other references that are 21 invalidating and there is going to be an issue as to 22 whether they were known of or whether they have just 23 recently been discovered. But, in this case, it was a 24 product that was produced by LG.</p>	<p>1 23rd submission to Your Honor.</p> <p>2 SPECIAL MASTER POPPITI: I have looked at 3 those.</p> <p>4 MS. BRZEZYNSKI: The same issues were raised 5 by Tatung then; therefore, it's the -- if Tatung wanted 6 to proceed with a deposition of MLA, it should have done 7 so during fact discovery.</p> <p>8 I also want to point out to Your Honor 9 another important fact. You will notice, in their 10 August 27th letter sent less than one hour before the 11 hearing today, that Tatung also refers to an LG 500 LC 12 class. I want to point out to you, Your Honor, that 13 Tatung and ViewSonic have already questioned John Kim 14 one of the inventors, about that product at length in 15 March of this year. They also questioned Mr. Bang, 16 after insisting on his deposition, at length, about that 17 product in March of this year. They also deposed a 18 third party, LGE USA, about that product.</p> <p>19 So, once again, those issues were before 20 Tatung and raised by Tatung during fact discovery, and 21 if they wanted to proceed with a deposition of MLA, they 22 should have noticed it during fact discovery. It is now 23 untimely and there is simply no basis for granting a 24 deposition of MLA at this time.</p>
Page 63	Page 65
<p>1 So, we think that we have a right to inquire 2 into that and discover why that or any other similar 3 products, from which that product may have been derived, 4 there may be some other manufacturers' products that we 5 have specifically identified, of why those were not 6 disclosed to the patent office, and, in fact, why they 7 weren't disclosed to us in discovery.</p> <p>8 MS. BRZEZYNSKI: Your Honor, may I respond?</p> <p>9 SPECIAL MASTER POPPITI: Yes, please.</p> <p>10 MS. BRZEZYNSKI: Your Honor, first of all, 11 we absolutely disagree that this Lucky Gold Star product 12 is invalidating prior art and we will address that at 13 the appropriate time. We also disagree that any 14 improper conduct has occurred by either MLA attorneys or 15 by LPL.</p> <p>16 Regardless of that, Your Honor, we believe 17 you nailed it on the head that any notice of the 18 deposition of MLA should have been served long, long 19 ago, prior to the close of fact discovery.</p> <p>20 Tatung has had an inequitable conduct 21 defense since 2005. Second, Tatung asserted wrong 22 theories of prior art relating to its inequitable 23 conduct defense in its February 2006 interrogatory 24 answers which we attached as Exhibit K to our August</p>	<p>1 I think what we have here is an attempt by 2 Tatung to bootstrap a 30(b)(6) deposition of McKenna, 3 Long & Aldridge on a notice of deposition and subpoena 4 for Rebecca Rudich's deposition that they served in 5 February 2007. That should not be permitted for several 6 additional reasons, including that Rebecca Rudich's 7 deposition was withdrawn, by subpoena, and then was 8 revised to one issue only, only related to the '079 9 application, which was confirmed by Mr. Merideth as late 10 as his July 9th e-mail, which is also attached to this 11 submission.</p> <p>12 Second, Your Honor, Tatung says, in its 13 August 27th letter today, that they relied on the 14 Rebecca Rudich declaration when they issued the 15 subpoena, so that cannot be accurate because the 16 subpoena and deposition notice for Rebecca Rudich was 17 served by Tatung on February 27th, but Miss Rudich's 18 first declaration was not dated until March 6th, 2007. 19 So, certainly, there is no possible way that Tatung 20 could have relied on Rebecca Rudich's declaration when 21 it served its subpoena.</p> <p>22 In any event, even if Tatung attempts to 23 argue that sometime after Miss Rudich's declaration, 24 Tatung relied on the language in there to suggest that</p>

Hearing

18 (Pages 66 to 69)

Page 66	Page 68
<p>1 Miss Rudich was involved in patent prosecution of the</p> <p>2 patents-in-suit, again, we argue that that's simply not</p> <p>3 possible either. That declaration was signed in 2007.</p> <p>4 The language in there says that Miss Rudich works on</p> <p>5 patent prosecution activity related to the</p> <p>6 patents-in-suit. The only patent prosecution activity</p> <p>7 going on in 2007 was related to the continuation</p> <p>8 application. The patents-in-suit issued in 2002, and</p> <p>9 there has been no patent prosecution activity after that</p> <p>10 point</p> <p>11 I, therefore, suggest to Your Honor that</p> <p>12 Tatung's recent attempt to obtain a deposition of</p> <p>13 McKenna, Long & Aldridge is wholly inappropriate and</p> <p>14 untimely and should be denied.</p> <p>15 MS. HO: Your Honor, if I may address a</p> <p>16 couple of the points that Miss Brzezynski just brought</p> <p>17 up?</p> <p>18 SPECIAL MASTER POPPITI: Please</p> <p>19 MS. HO: First of all, we did not say, in</p> <p>20 our submission this morning, that we had relied on</p> <p>21 Miss Rudich's declaration in issuing our subpoena to</p> <p>22 her. That is not what we said.</p> <p>23 We issued our subpoena to her and then we</p> <p>24 received her declaration which confirmed to us that she</p>	<p>1 SPECIAL MASTER POPPITI: Yes. That's pretty</p> <p>2 much the same.</p> <p>3 MS. HO: And, so, you see that the topics in</p> <p>4 -- or the subtopics in topic No. 2 are generally limited</p> <p>5 to the products that were recently disclosed</p> <p>6 And then topic No. 3 has to do with the NEC</p> <p>7 litigation which Your Honor has already ruled that we</p> <p>8 can explore.</p> <p>9 The only question is: Why topic No. 1?</p> <p>10 Well, when read in isolation, yes, topic No. 1 could</p> <p>11 have been noticed before March 30th, 2007. That's true.</p> <p>12 But it would have been pointless for us, Your Honor, I</p> <p>13 submit, to just notice topic No. 1 because, back in</p> <p>14 March, we did not know about the LPL prior art products</p> <p>15 that just recently have been produced and that we want</p> <p>16 to explore in topic No. 2. So, the two topics are</p> <p>17 interrelated.</p> <p>18 SPECIAL MASTER POPPITI: I gather, and I</p> <p>19 want you to speak, just very briefly, to</p> <p>20 Miss Brzezynski's comments with respect to Tatung's</p> <p>21 response to the respective interrogatories that were</p> <p>22 identified at Exhibit K. There, Tatung described, with</p> <p>23 some factual backdrop, its -- I am just flipping through</p> <p>24 it, that's why I am -- it describes some of the factual</p>
Page 67	Page 69
<p>1 was the appropriate witness. Had we known, as it turned</p> <p>2 out, that she is not the appropriate witness, then we</p> <p>3 could have subpoenaed someone else. We could have</p> <p>4 subpoenaed McKenna or we could have subpoenaed someone</p> <p>5 else at the McKenna firm before the close of fact</p> <p>6 discovery, but we did not do that because we understood,</p> <p>7 based on her declaration, that she was the appropriate</p> <p>8 witness</p> <p>9 So, that's my first point.</p> <p>10 My second point is that I know that Your</p> <p>11 Honor was just focusing on topic No. 1, but if you turn</p> <p>12 to topic No. 2, you see that those topics are really</p> <p>13 limited to what's defined in the depo notice as the LPL</p> <p>14 prior art products</p> <p>15 SPECIAL MASTER POPPITI: Yes.</p> <p>16 MS. HO: And the definition of LPL prior art</p> <p>17 product is the products -- includes the products</p> <p>18 disclosed in the recent discovery and that were</p> <p>19 conceived, made, marketed, sold, distributed, disclosed,</p> <p>20 and/or offered for sale by LPL on or before December</p> <p>21 31st, 1998, and that's pretty much the same definition</p> <p>22 that was used in LPL's -- I am sorry, in our deposition</p> <p>23 notice, supplemental deposition notice to LPL that we</p> <p>24 had just talked about earlier.</p>	<p>1 backdrop for its assertion of inequitable conduct, and</p> <p>2 it, in fact, describes some prior art, as I remember,</p> <p>3 when I read it initially.</p> <p>4 MS. HO: That's correct, Your Honor.</p> <p>5 MR. MERIDETH: We do have some prior art,</p> <p>6 but let me make it clear, we view taking the deposition</p> <p>7 of counsel to be a serious matter that should not be</p> <p>8 undertaken based upon just skepticism.</p> <p>9 SPECIAL MASTER POPPITI: Right.</p> <p>10 MR. MERIDETH: In this case, we have a</p> <p>11 situation in which we were presented three weeks ago</p> <p>12 with what we view, notwithstanding Miss Brzezynski's</p> <p>13 position, to be a smoking gun. That immediately brings</p> <p>14 into focus the necessity to take the deposition of M.L.A.</p> <p>15 with respect to inequitable conduct with respect to that</p> <p>16 reference, and it's not simply that reference in</p> <p>17 isolation because, while the other references are not</p> <p>18 unimportant, we did not view them, prior to receiving</p> <p>19 this most recent disclosure, to be of such moment that</p> <p>20 it was necessary for us to depose M.L.A.</p> <p>21 We have a new ball game here. We have a</p> <p>22 piece of prior art that we believe was intentionally</p> <p>23 withheld. We have a right, I respectfully submit, to</p> <p>24 explore that. In the context of that area to produce</p>

Hearing

19 (Pages 70 to 73)

Page 70	Page 72
<p>1 that prior art, I think we are compelled to ask the</p> <p>2 question, Well, if you withheld that piece of prior art,</p> <p>3 what other prior art did you withhold? And that</p> <p>4 question would not have been appropriate prior to the</p> <p>5 production of this Lucky Gold Star product. And I don't</p> <p>6 think it is appropriate to argue that, Well, just</p> <p>7 because we managed to keep this Lucky Gold Star product</p> <p>8 under wraps until the discovery cutoff lapsed, you don't</p> <p>9 have any right to make any discovery with respect to</p> <p>10 inequitable conduct That's fundamentally unfair. And</p> <p>11 it was the production of that particular product that</p> <p>12 really brings this whole matter of inequitable conduct</p> <p>13 into focus</p> <p>14 MS. BRZEZYNSKI: Your Honor, the arguments</p> <p>15 being made by Miss Ho and Mr. Merideth are inconsistent</p> <p>16 with each other Mr. Merideth is now saying that if,</p> <p>17 you know, as a result of production of the -- in</p> <p>18 documents relating to Lucky Gold Star, they now want a</p> <p>19 deposition of McKenna.</p> <p>20 Miss Ho is saying that Tatung could have</p> <p>21 subpoenaed someone else prior to the close of discovery</p> <p>22 if they had known that Miss Rudich was not involved in</p> <p>23 the prosecution of the patents-in-suit.</p> <p>24 SPECIAL MASTER POPPITI: It was against the</p>	<p>1 issues during discovery and they should have noticed</p> <p>2 this deposition at that time.</p> <p>3 SPECIAL MASTER POPPITI: There is no</p> <p>4 question, certainly in -- there is no question in my</p> <p>5 mind that a deposition of a patent prosecutor from</p> <p>6 McKenna could have been noticed before. Mr. Miller</p> <p>7 acknowledges that and I expect that Miss Ho would</p> <p>8 acknowledge that as well.</p> <p>9 I know, and you all know, and there is even</p> <p>10 some case law out there that expresses chagrin when it</p> <p>11 is done, there is some case law that suggests if you are</p> <p>12 going to depose the inventor, then you shouldn't be</p> <p>13 deposing the patent prosecutor -- I think I am correct</p> <p>14 in stating it that way -- so, if there was a</p> <p>15 determination made not to depose a McKenna, Long</p> <p>16 attorney on the issue of inequitable conduct and if the</p> <p>17 path forward on Rebecca Rudich was as it is and there is</p> <p>18 some garble to it, I understand where we were the day</p> <p>19 before there was production of Lucky Gold Star</p> <p>20 I think what I see here is, with the</p> <p>21 production of -- and maybe -- let me pose this question:</p> <p>22 If Lucky Gold Star were produced in isolation and it was</p> <p>23 not connected to NEC litigation, would we not be having</p> <p>24 a different discussion?</p>
Page 71	Page 73
<p>1 backdrop of this late production That's what I</p> <p>2 understood Ms. Ho's comments.</p> <p>3 MS HO: That's correct.</p> <p>4 MS BRZEZYNSKI: The issue, though, Your</p> <p>5 Honor, is Miss Rudich's deposition was never related to</p> <p>6 the patents-in-suit. It was always limited to the '079.</p> <p>7 If you read Miss Ho's argument, then you</p> <p>8 also have to assume that Tatung's offer, over several</p> <p>9 months, to accept a declaration from Ms. Rudich was also</p> <p>10 an empty offer that they were always going to renege on.</p> <p>11 Miss Rudich's deposition was always limited to the '079</p> <p>12 and nothing more</p> <p>13 Now, correct me, Your Honor, Tatung had</p> <p>14 previously asserted every product as prior art in</p> <p>15 support of their inequitable conduct defense, including</p> <p>16 an LGE product, prior to the close of discovery. Any</p> <p>17 deposition of McKenna, Long & Aldridge attorneys should</p> <p>18 have been noticed prior to the close of discovery</p> <p>19 The suggestion now that the production of</p> <p>20 the Lucky Gold Star information somehow raises the</p> <p>21 importance of this issue and warrants a deposition is</p> <p>22 simply inappropriate.</p> <p>23 SPECIAL MASTER POPPITI: Let me ask --</p> <p>24 MS BRZEZYNSKI: They should have made these</p>	<p>1 MR. MERIDETH: We very well could be, but,</p> <p>2 in this case, we know that at least LG Phillips, and we</p> <p>3 believe McKenna was involved in the NEC litigation, had</p> <p>4 that sheet, that specification for this product in at</p> <p>5 least 1999 or 2000, and, yes, it makes a lot of</p> <p>6 difference.</p> <p>7 MS. HO: And, in fact, Your Honor, we were</p> <p>8 able to obtain copies of the complaints in the NEC</p> <p>9 matter, and the complaints identify McKenna's</p> <p>10 predecessor, which I believe is McKenna -- sorry, I am</p> <p>11 just trying to flip through it right now -- it's -- I am</p> <p>12 sorry, it's McKenna's predecessor, Long, Aldridge &</p> <p>13 Norman as the lead trial counsel in those cases.</p> <p>14 SPECIAL MASTER POPPITI: Here is where I</p> <p>15 think we are: There is no question that I expected</p> <p>16 production may lead to the requirement for additional</p> <p>17 discovery of whatever -- whatever that additional</p> <p>18 discovery was at the time that we had that conversation</p> <p>19 about the prospect of having additional discovery</p> <p>20 sometime ago, and I want to say it was in the March or</p> <p>21 April time frame</p> <p>22 Given the production of the Lucky Gold Star</p> <p>23 asserted prior art and given the context of its</p> <p>24 production, namely, the reference to NEC litigation, I</p>

Hearing

20 (Pages 74 to 77)

Page 74	Page 76
<p>1 am satisfied that Tatung should be able to explore all 2 that that means with a McKenna, Long attorney. 3 Again, I will ask Mr. Merideth and Miss Ho, 4 for purposes of getting something across my desk as 5 quickly as possible, to do the form of order -- not a 6 form of order, it would be in the format of a proposed 7 recommendation to the Court, reviewed by Miss Brzezynski 8 for form only, and present it to me not later than the 9 end of the week Friday. 10 MS. BRZEZYNSKI: Your Honor, I'd like an 11 opportunity to address their proposed -- Tatung's 12 proposed topics for examination as well 13 SPECIAL MASTER POPPITI: Okay. 14 MS. BRZEZYNSKI: Tatung's proposed topics 15 are extremely broad, not limited to just the Lucky Gold 16 Star products only. When you are looking at topic No. 17 1, they are general broad topics as to McKenna's 18 business policies and procedures and practices, and are 19 not at all related to Lucky Gold Star products or 20 anything specific to Lucky Gold Star or prosecution of 21 the patents-in-suit in NEC litigation. 22 Topic No. 1 is completely inappropriate, 23 including its two subtopics. 24 SPECIAL MASTER POPPITI: Let's talk about</p>	<p>1 here is that topic No. 1, as framed, is extremely broad, 2 covers McKenna's general business practices and 3 procedures relating to patent prosecution for all of its 4 clients and all of its matters and is not limited to 5 just the prosecution of the patents-in-suit. 6 MR. MERIDETH: We need to know whether there 7 is -- 8 SPECIAL MASTER POPPITI: Are you suggesting 9 that if the topic were changed to say "patents-in-suit," 10 that there is some policy or practice that's different 11 with respect to these patents-in-suit as opposed to 12 other work that McKenna, Long did between 1998 and 2002? 13 MS. BRZEZYNSKI: I am not saying that there 14 is a difference. What I am saying is the only relevant 15 information -- and, first of all, we do argue that NEC 16 deposition is appropriate. 17 SPECIAL MASTER POPPITI: I understand that 18 MS. BRZEZYNSKI: But the only relevant area 19 is prosecution of the patents-in-suit. And getting into 20 McKenna's general business practices is proprietary and 21 privileged information and it's inappropriate in this 22 context. 23 MR. MERIDETH: I respectfully disagree. 24 SPECIAL MASTER POPPITI: I don't know how</p>
Page 75	Page 77
<p>1 that for a moment. 2 Who is going to speak to that, please? 3 Mr. Miller? Mr. Merideth or Miss Ho? 4 MR. MERIDETH: The issue here is whether 5 McKenna, Long & Aldridge had a policy with respect to 6 requiring its clients to produce prior art or a product 7 that -- or identified product that would implicate 8 beyond cerebar (phonetic) in the process of prosecuting 9 the patent. 10 We need to determine whether or not this 11 reference to the Lucky Gold Star product was, in fact, 12 given to McKenna, Long & Aldridge, whether they had it 13 in their possession, or whether it was not disclosed to 14 them by their client, that is going to bear on how the 15 trial of this issue of inequitable conduct goes forward. 16 If the answer to the question: Did you know 17 anything about this Lucky Gold Star product?, is, Gee, I 18 didn't know anything about it; I didn't know that there 19 was a product like that. The next question is going to 20 be, Well, what did you do to find out about it? And 21 that's what the question No. 1 is intended to elicit. 22 If we can't ask those questions, we are going to have 23 one arm behind our back. 24 MS. BRZEZYNSKI: Your Honor, the problem</p>	<p>1 there can be any development of what was done or not 2 done against what I understand to be the topic of 3 inequitable conduct if Tatung is not able to explore the 4 process as it is contemplated. 5 MS. BRZEZYNSKI: They should be required 6 to -- 7 SPECIAL MASTER POPPITI: Would it be fair 8 for me to suggest that what I expect Mr. Merideth and 9 his colleagues would be looking for is what you would 10 all say in response to an assertion that something went 11 wrong here. I mean, if you start describing your policy 12 and practice in the context of, We didn't do anything 13 out of the ordinary here, without Tatung having the 14 opportunity to explore that in discovery, I think there 15 is one hand tied behind their back; isn't there? 16 MS. BRZEZYNSKI: I disagree. Tatung can ask 17 questions relating to policies and procedures for 18 prosecuting the patents-in-suit and should not be 19 permitted to get broader than that, Your Honor 20 We are talking about proprietary information 21 relating to McKenna's business products being asked by a 22 competitive law firm. 23 SPECIAL MASTER POPPITI: Excuse me. Why 24 can't these topics be framed in the context of the</p>

Hearing

21 (Pages 78 to 81)

Page 78	Page 80
<p>1 patents-in-suit?</p> <p>2 MS BRZEZYNSKI: I am sorry. Can you say</p> <p>3 that again?</p> <p>4 SPECIAL MASTER POPPITI: Mr. Merideth, why</p> <p>5 can't the topics 1A and B be framed in the context of</p> <p>6 the patents-in-suit?</p> <p>7 MR. MERIDETH: They can, Your Honor, so long</p> <p>8 as we are able to ask whether there is any variation on</p> <p>9 the policies and procedures that are generally</p> <p>10 applicable to other clients. In other words, if they</p> <p>11 say, Well, we send out a questionnaire, or we ask the</p> <p>12 following specific question, or we don't ask the</p> <p>13 following specific question, I think we should be able</p> <p>14 to ask, Well, in general, is your practice the same or</p> <p>15 different with respect to other clients?</p> <p>16 SPECIAL MASTER POPPITI: Why?</p> <p>17 MR. MERIDETH: I believe that it pinpoints</p> <p>18 the issue of whether or not there has been sufficient</p> <p>19 inquiry and inquiry that meets the standard of care</p> <p>20 that's required under the patent laws with respect to</p> <p>21 asking the patentee to disclose prior art or art that</p> <p>22 would preclude patenting because of the on sale of art</p> <p>23 And if, for example, I am not suggesting that was the</p> <p>24 case here, MLA simply never asked LGE or LPL for that</p>	<p>1 Somebody could answer, Well, for these</p> <p>2 patents-in-suit, thus or such happened, and if we are</p> <p>3 not allowed to follow-up with, Well, what was the</p> <p>4 practice with all the hundreds of LG patents, was there</p> <p>5 a policy?, it becomes very difficult for us to get any</p> <p>6 of the evidence regarding intent.</p> <p>7 MS. BRZEZYNSKI: Your Honor, I am now even</p> <p>8 more troubled by Mr. Kreisman's comments that they want</p> <p>9 to depose a witness about earlier practices about other</p> <p>10 patents.</p> <p>11 SPECIAL MASTER POPPITI: I don't think I</p> <p>12 heard him say "other patents." I thought I heard him</p> <p>13 say "other policies and practice."</p> <p>14 MR. KREISMAN: That's true, Your Honor.</p> <p>15 SPECIAL MASTER POPPITI: Let's do this: I</p> <p>16 am going to permit that topics 1A and 1B, given the</p> <p>17 nature of the conversation that we have just had, I do</p> <p>18 not think that that involves proprietary information</p> <p>19 Your record is protected. The document that I will look</p> <p>20 to sign, I would expect, would highlight the discussion</p> <p>21 that we have just had, certainly not in the detail that</p> <p>22 we have had it, so that Judge Farnan can be informed, as</p> <p>23 I expect he would be, given the nature of the</p> <p>24 conversation that we have had</p>
Page 79	Page 81
<p>1 information, we are entitled to know that. If it is</p> <p>2 their practice to otherwise ask for that information and</p> <p>3 they failed to do so in this case, I think we ought to</p> <p>4 be able to develop that.</p> <p>5 MS. BRZEZYNSKI: I submit that those</p> <p>6 follow-up questions do not matter and are not relevant</p> <p>7 at all to this case, and any questions at all should be</p> <p>8 limited to just prosecution of the patents-in-suit.</p> <p>9 MR. KREISMAN: Your Honor, if I may speak.</p> <p>10 SPECIAL MASTER POPPITI: Yes.</p> <p>11 MR. KREISMAN: I may be one of the only</p> <p>12 patent prosecutors on the phone. What I can tell you is</p> <p>13 there is the issue of the McKenna firm and the attorneys</p> <p>14 at the McKenna firm and their predecessor practices have</p> <p>15 a tremendous amount of patent work being prosecuted on</p> <p>16 behalf of LGE and LG Phillips, and if we are limited to</p> <p>17 questioning LG Phillips' representative only on the</p> <p>18 patents-in-suit, you can see a position we could be</p> <p>19 placed in where, at trial, we will be suddenly advised</p> <p>20 there was information that was given to LG Phillips, or</p> <p>21 LGE, as a predecessor, about other LG patents that had</p> <p>22 been worked on, and if we are not allowed to ask about</p> <p>23 those other earlier practices regarding their earlier</p> <p>24 portfolio, we will never know. We will be sandbagged</p>	<p>1 Is Friday, with this document, also doable,</p> <p>2 please?</p> <p>3 MR. MERIDETH: Yes.</p> <p>4 SPECIAL MASTER POPPITI: From LPL's</p> <p>5 perspective?</p> <p>6 MS. BRZEZYNSKI: Yes, Your Honor. If I may</p> <p>7 just add, is my understanding correct that the topics</p> <p>8 are limited, however, to the Lucky Gold Star product and</p> <p>9 should not include any questioning related to any other</p> <p>10 of the asserted prior art products by Tatung?</p> <p>11 MS. HO: We have defined prior art LPL</p> <p>12 product in the deposition notice.</p> <p>13 SPECIAL MASTER POPPITI: Yes, you have.</p> <p>14 MS. HO: And those --</p> <p>15 SPECIAL MASTER POPPITI: It's all</p> <p>16 supplemental.</p> <p>17 MS. HO: Yes, Your Honor. Well, it's all</p> <p>18 supplemental and that 500 LC monitor. Let me clarify.</p> <p>19 It's the product identified in the recent discovery</p> <p>20 produced by LPL plus the LG 500 LC monitor.</p> <p>21 MR. MERIDETH: Let me explain why the 500 LC</p> <p>22 is important in that context. It has to do with the</p> <p>23 supplemental information filing by LPL with respect to</p> <p>24 the '079 patent in which other prior art that was</p>

Hearing

22 (Pages 82 to 85)

Page 82	Page 84
<p>1 identified by the Tatung defendants was provided to the</p> <p>2 patent office, that the reference to the 500 LC was</p> <p>3 omitted, and we want to know why</p> <p>4 MS BRZEZYNSKI: Your Honor, the LG 500 LC</p> <p>5 product was raised by Tatung in March and April. If</p> <p>6 they had an issue with that product, they should have</p> <p>7 raised it in a notice prior to this close of fact</p> <p>8 discovery</p> <p>9 SPECIAL MASTER POPPITI: I thought I</p> <p>10 understood Mr. Merideth to say, and please correct me if</p> <p>11 I am wrong or restate what you have just said to me, the</p> <p>12 reason why the LG 500 LC is being raised at this time,</p> <p>13 in this context, is because of information that was</p> <p>14 received in supplemental production?</p> <p>15 MR. MERIDETH: Correct.</p> <p>16 MR. KREISMAN: I think I can clarify the</p> <p>17 point if I may, Your Honor</p> <p>18 SPECIAL MASTER POPPITI: Please</p> <p>19 MR. KREISMAN: We spoke, in the earlier</p> <p>20 hearings, about the '079 prosecution, and Mr. Merideth</p> <p>21 mentioned an information disclosure statement, an IDS,</p> <p>22 and he had mentioned that certain products were</p> <p>23 appearing on that now, and Miss Brzezynski, rightly so,</p> <p>24 indicated to Your Honor that it would be McKenna's</p>	<p>1 product is an invalidating prior art reference and it</p> <p>2 was not disclosed during prosecution of the</p> <p>3 patents-in-suit, and based on LPL's own reading and</p> <p>4 application of Your Honor's claim construction, this</p> <p>5 product would have been material prior art, would be</p> <p>6 invalidating prior art, and should have been disclosed.</p> <p>7 So, it is the receipt of LPL's recent</p> <p>8 infringement contentions that have confirmed for us that</p> <p>9 this is a material reference for purposes of inequitable</p> <p>10 conduct, and that is why we have included it as one of</p> <p>11 the products in the definition for prior art LPL</p> <p>12 products.</p> <p>13 MS. BRZEZYNSKI: If that is all, Your Honor,</p> <p>14 Tatung was making those claims in March and April when</p> <p>15 they deposed LPL witnesses on the LG 500 LC product.</p> <p>16 SPECIAL MASTER POPPITI: Look, I didn't</p> <p>17 focus on the LG 500 issue. I think I understand what</p> <p>18 you are talking about, but, quite frankly, I want --</p> <p>19 MR. AMBROZY: Your Honor, also the</p> <p>20 argument --</p> <p>21 SPECIAL MASTER POPPITI: Give me a second</p> <p>22 please. What I want you to do, and I am sorry that I</p> <p>23 have to do it this way, I just want you to focus on the</p> <p>24 500 LC issue, and I want you to do it without discussing</p>
Page 83	Page 85
<p>1 obligation, when references that were asserted as prior</p> <p>2 art in litigation came to their attention, that they</p> <p>3 would submit those in an IDS to the patent office.</p> <p>4 SPECIAL MASTER POPPITI: I remember exactly</p> <p>5 what you said and I understand the obligation.</p> <p>6 MR. KREISMAN: Thank you, Your Honor. And</p> <p>7 what was our reading of the IDS is the 500 LC product,</p> <p>8 which has been repeatedly identified in interrogatory</p> <p>9 responses by the defendants, continues to be omitted</p> <p>10 from that IDS list.</p> <p>11 MS. BRZEZYNSKI: Your Honor, I thought we</p> <p>12 discussed this issue previously that if an IDS was</p> <p>13 submitted in the '079 application, that that was an</p> <p>14 obligation of McKenna to provide that information but</p> <p>15 that it had nothing to do with the prosecution of the</p> <p>16 patents-in-suit. If it had to do with the '079, then</p> <p>17 the appropriate inquiry would be of Ms. Rudich but not</p> <p>18 of an MLA attorney having to do with the patent</p> <p>19 prosecution of the patents-in-suit.</p> <p>20 MS. HO: The reason that the LG 500 LC</p> <p>21 monitor continues to be relevant in this case, Your</p> <p>22 Honor, is because, based on LPL's most recent</p> <p>23 infringement contention, which was served after Your</p> <p>24 Honor's claim construction rulings, we believe that this</p>	<p>1 it on the phone. I want to be able to look at it and I</p> <p>2 want it in two pages and I want cross filings,</p> <p>3 simultaneous filings tomorrow, not later than 3:00 my</p> <p>4 time, so you will all have time to get it done. And I</p> <p>5 will advise counsel sometime late tomorrow afternoon</p> <p>6 what my view of including or not including the LG 500 LC</p> <p>7 product hopefully by the end of the business day</p> <p>8 tomorrow if not first thing Wednesday morning.</p> <p>9 MS. HO: I did not catch the time. Did you</p> <p>10 say 3:00?</p> <p>11 SPECIAL MASTER POPPITI: 3:00 my time,</p> <p>12 please. That would be 12:00 your time. And I just want</p> <p>13 two short pages without having to use a magnifying</p> <p>14 glass.</p> <p>15 Okay?</p> <p>16 MS. BRZEZYNSKI: Yes, Your Honor.</p> <p>17 SPECIAL MASTER POPPITI: Anything else,</p> <p>18 please? Thank you all</p> <p>19 MR. CHRISTENSON: Your Honor, just briefly</p> <p>20 before we conclude, we have had some discussions</p> <p>21 off-line to agree on some revisions or refinement to the</p> <p>22 expert disclosure deadlines, and I don't think it would</p> <p>23 impact any of the work that you are going to be doing,</p> <p>24 but in the abundance of caution, and to assist you in</p>

Hearing

23 (Pages 86 to 87)

Page 86

1 your supervision of discovery, would it be a good idea
2 to just send you the updated agreement for your review?
3 SPECIAL MASTER POPPITI: Say that again. I
4 apologize. Say it again.
5 MR. CHRISTENSON: I was just saying: Would
6 you like to see the dates that we agreed upon or do you
7 want to just leave that to us?
8 SPECIAL MASTER POPPITI: I'd rather leave it
9 to you. If you need me, you know where to get me.
10 MR. CHRISTENSON: Very well. Thank you.
11 SPECIAL MASTER POPPITI: Okay? Anything
12 else, then, please? Thank you all.
13 (The hearing was concluded at 4:38.)
14
15
16
17
18
19
20
21
22
23
24

Page 87

1 CERTIFICATE
2 STATE OF DELAWARE:
3
4 NEW CASTLE COUNTY:
5 I, Renee A. Meyers, a Registered Professional
6 Reporter, within and for the County and State aforesaid,
7 do hereby certify that the foregoing teleconference was
8 taken before me, pursuant to notice, at the time and
9 place indicated; that the teleconference was correctly
10 recorded in machine shorthand by me and thereafter
11 transcribed under my supervision with computer-aided
12 transcription; that the foregoing teleconference is a
13 true record; and that I am neither of counsel nor kin to
14 any party in said action, nor interested in the outcome
15 thereof.
16 WITNESS my hand this 27th day of August A.D.
17 2007
18
19 RENEE A. MEYERS
20 REGISTERED PROFESSIONAL REPORTER
21 CERTIFICATION NO. 106-RPR
22 (Expires January 31, 2008)
23
24